Modern Entries,
IN
ENGLISH:

BEING A
Select COLLECTION
OF
PLEADINGS

England Reports.

IN THE
Courts of KING'S BENCH, COMMON
PLEAS and EXCHEQUER: (*viz.*)

Declarations, Pleas in Abatement and in Bar, Replications, Rejoinders, *&c.* Demurrers, Iſſues, Verdicts, Judgments, Forms of Continuances, Diſcontinuances, and other Entries, and of Entering Judgments, *&c.* in all Perſonal Actions:

And alſo all Kinds of WRITS Original and Judicial.

TRANSLATED FROM

The moſt Authentick BOOKS, but chiefly from *Lutwich*'s, *Saunders*'s, *Ventris*'s, *Salkeld*'s, and the Modern Reports; and from other *Caſes* lately tried and adjudged, and wherein Writs of *Error* have been brought, and *Judgments* affirmed:

TOGETHER WITH
READINGS and OBSERVATIONS

On the ſeveral Caſes in the **Reports**, as well relating to the PRECEDENTS herein, as to all other Caſes incident to each particular TITLE; and the ſame abridg'd in a methodical Order.

To which are Added
References to all the other Entries in the Books.

With Three diſtinct TABLES, One of the PRECEDENTS, the Second of the CASES Abridg'd, and the Third of the NAMES of the CASES.

By a GENTLEMAN of the *INNER TEMPLE.*

In the SAVOY:
Printed by E. and R. NUTT, and R. GOSLING, (Aſſigns of *Edw. Sayer*, Eſq;) for
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M DCC XXXIV.

BRITISH MUSEUM
8 DEC 45

THE

Publiſher to the Reader.

PRefatory Recommendations of Books ſeldom anſwer the End propos'd; for the more Extravagant they are, the more Suſpicious. Experience tells us how pall'd are our Expectations, raiſed by a pompous Recommendation of a Book, which upon a Peruſal falls far ſhort of the Character given it by the Author. Under theſe Conſiderations we ſhould have omitted ſaying any thing of this Performance, but that there are few Books praiſed or peruſed, but what claim ſome Sanction from the known Repute and Eſteem of the Author, againſt whom, if there are any Prejudices received, they are ſo far Fetters to the free Uſe and Exerciſe of the Reader's Judgment, that they ſtifle his Powers of judging rightly. To prevent which (as much as lies in his Power) our Author *has concealed his Name.*

For it muſt be owned, in every Diſpoſition we are not capable of forming a right Judgment, even of Things indifferent to us; much leſs where there is the leaſt Prepoſſeſſion. Therefore all here deſired by the Author is, that the Reader will peruſe this Performance of his with Candour and Good-nature. What he intends thereby is, that it may be uſeful three manner of Ways. Firſt, *That the Practiſers may have the Precedents in the Books of Authority tranſlated into* Engliſh, *in as modern and eaſy Stile as the Nature of the Subject will bear; and that the Reader may be the better enabled to judge of them, he has inſerted the ſeveral Exceptions (if any) that have been taken to thoſe he has tranſlated; and the Alterations made in Purſuance of ſuch Exceptions, are printed in a different Character, or pointed out at the End of each Precedent.* Secondly, *As our Author had a Common Place of the Reports of adjudg'd Caſes relating to the ſeveral Titles, he thought it might be of Uſe to divide them under their proper Heads, that the Reader may obſerve* In what Inſtances thoſe Actions will or will not lie; By and againſt whom to be brought; What is the uſual Proceſs; What Objections have been taken to Declarations and the ſeveral Pleadings therein;

in; Of the Trial, Evidence, Verdict, Damages, Judgment and Execution, and other Matters incident thereto; *and that it might not be too prolix, after a few Inſtances under each of theſe Particulars, there are inſerted only the Names of other Caſes to be reſorted to, wherein Diſputes have ariſen, and Determinations been given, to gratify the Reader's Inquiry: And a third Branch of this Work is, that as it would be impoſſible here to inſert the various and infinite Numbers of Precedents ſuitable to every Circumſtance, the Reader is directed to other Precedents in the Books of Entry and Reports; for which End it may be obſerved, that not only the Subſtance of* Townſend *and* Cornwall's *Tables are here placed relating to every Title therein, and branched into a much greater Number of Particulars, for the more ready finding them; but alſo the Precedents that are in other Books, ſubſequent in Time, are here referr'd to, and ſeveral other References inſerted, which have as yet paſs'd unobſerved. Our Author is ſenſible of his own Inability to bring theſe his Endeavours near to any Degree of Perfection.*

But leaſt it ſhould be objected that there are but four Titles contained in this Book, let it be conſidered, how Copious are Actions upon the Caſe, and how many various Species of Actions are comprehended under that Title, each of them containing a great Variety, and the Objection will no longer hold, ſince that Title might have been branched out into ten Particulars, and none omitted.

We have thought it proper to take Notice that a Second Volume *is now in the Preſs, Containing Actions of* Covenant, Debt, Detinue, Prohibition, *and* Quare Impedit; *and the Third is deſign'd to comprehend the Titles* Replevin, Treſpaſs *and* Waſte; *together with* General Entries, Judgments *and* Writs, *which is fitting for the Preſs with all convenient Diſpatch.*

As it muſt be confeſſed, that to endeavour at the publick Good, to promote the Intereſt of the Profeſſion in which a Man is educated, and to deſire that others may partake with him of any uſeful Collections in his Cuſtody, is a laudable Attempt; our Author hopes he need not make any other Apology for his Exhibiting this to the Publick, to whom that it may be uſeful is all he deſires.

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ERRATA.

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8 DEC 46

Abatement.

Smallwood, and Others, againſt the Biſhop of Litchfield and Coventry, and Others.

Plea in Abatement to a Quare Impedit, **that there is no ſuch Writ in the Regiſter of Writs.** Lut. 2.

AND the ſaid *Biſhop* and *Walter*, by *John Lutwich*, their Attorney, come and defend the Force and Injury, and crave *Oyer* of the Original Writ of the aforeſaid Executors, and it is read to them in theſe Words: ‘ *Elizabeth*, by the Grace of GOD, of *England*, *France* and *Ireland*, Queen, Defender of the Faith, *&c.* ‘ to the Sheriff of *Derby*, Greeting: Command *William*, Biſhop of *Coventry* and *Litchfield*, and *Walter Marſh*, Clerk, that ‘ they juſtly, and without Delay, permit *Humphrey Smallwood*, *Richard Sale*, Clerk, and *Thomas Sale*, Clerk, Executors of the Teſtament of *William Sale*, Clerk, to preſent a proper Perſon to the Archdeaconry of *Derby*, which in the Life of the aforeſaid *William Sale* ‘ was, and ſtill is vacant, and which (as it is ſaid) did in the Life-time of the ſaid *William*, belong to his Donation, and doth now belong to the Donation of them the ſaid *Humphrey* and *Thomas*, Executors of the Will of the aforeſaid *William*; And whereupon they ‘ complain, That the aforeſaid *Biſhop* and *Walter* unjuſtly diſturbed ‘ the ſaid *William* the Teſtator in his Life-time, (whoſe Executors ‘ the ſaid *Humphrey*, *Richard* and *Thomas* are) to the preſent Delay of the Execution of the Laſt Will and Teſtament of the ſaid ‘ *William*: And unleſs they ſo do, and if the ſaid *Humphrey*, *Richard* and *Thomas* make you ſecure of proſecuting their Claim, ‘ then ſummon, by good Summoners, the aforeſaid *Biſhop* and *Walter*, that they be before our Juſtices at *Weſtminſter*, from the Day of ‘ St. *Michael*, *in Fifteen Days*, to ſhew Cauſe why they will not; ‘ and have you there the *Summoners*, and this Writ. Witneſs Our ‘ Self at *Weſtminſter*, this Nineteenth Day of *July*, in the Thirtieth ‘ Year of our Reign.’ Which being read and heard, the ſaid *Biſhop* and *Walter* plead, That there is not any Form of any Writ of *Quare Impedit* in the Regiſter of Original Writs for an Executor or Executors of any Perſon, for any Diſturbance made to a Teſtator's preſenting to an Eccleſiaſtical Dignity; And that by the aforeſaid Writ it is ſuppoſed, That the aforeſaid Archdeaconry is vacant; in which Caſe the aforeſaid Executors might have had a Writ of *Quare Impedit*, for a Diſturbance made to them after the Death of the ſaid Teſtator: And alſo, the ſaid Writ contains in itſelf a double Diſturbance, one to the ſaid Teſtator, and another to the ſaid Executors: And alſo by the ſaid Writ, the ſaid Diſturbance which was made to the aforeſaid Teſtator, in his Life-time, is ſuppoſed to have been a Diſturbance to the Delay of the Execution of the ſaid Will, which could not in any wiſe be; and this they are ready to verify; wherefore, inaſmuch as the ſaid Writ, iſſued in the Manner aforeſaid, is not warranted by the Regiſter of Original Writs, they pray Judgment of the ſaid Writ, and that the ſame may be Quaſh'd, *&c.*

Note; It may be perceived that the Word *Dicit*, in a *Plea*, is tranſlated *that the Defendant pleads that*, &c. and ſuch Tranſlation is apprehended to be right; for *dico* is to declare, plead, aver, affirm or anſwer, according to the ſubject Matter to which it is applied; and therefore the Reader is deſired to make Uſe of it in that Manner throughout the reſt of the Pleadings in *Abatement*.

The Juriſdiction of the Court of Admiralty pleaded. Cliſt 17. (Or thus, *Comes and defends himſelf againſt the Force and Injury.*) (Or thus, *Comes and defends himſelf againſt the Charge of the Force and Injury.*)

And the ſaid *T. M.* by *Richard Carter*, his Attorney, comes and and defends the * Force and Injury, and pleads, That Cognizance of Pleas of taking any Thing upon the high Seas, hath Time out of Mind belong'd and appertain'd, and doth now belong and appertain to the Court of Admiralty, and not to any other Court; and that ſuch Pleas have been uſed and accuſtom'd to be try'd and diſcuſs'd in the ſaid Court of Admiralty, according to the Civil and Maritime Laws. And the ſaid *T. M.* further pleads, That he took and carry'd away the Goods and Chattels, in the Declaration mention'd, upon the High Seas for a Maritime Cauſe, which ſaid Taking and Carrying away of the ſaid Goods and Chattels upon the high Seas, in the Manner aforeſaid, are the ſame Taking and Carrying away whereof the ſaid *W.* above complains, **Without that**, That he the ſaid *T. M.* took the ſaid Goods and Chattles on Shore, at *Eccles* aforeſaid, or any where elſe but upon the high Seas; and this he is ready to verify: Wherefore, inaſmuch as the Cognizance of the Plea aforeſaid doth belong to the Court of Admiralty, the ſaid *T. M.* prays Judgment, if this Honourable Court will have any further Cognizance of the aforeſaid Plea, *&c.*

Becauſe the Defendants are Nieces and not Siſters to William.

And the aforeſaid *C.* and *E.* in their proper Perſons, come and defend the Charge of the Force and Injury, and pray Judgment of the ſaid Writ, becauſe they aver, That the ſaid *K.* and *P.* are Nieces to the ſaid *William*, (that is to ſay) Daughters of *R. B.* and *Grace* his Wife, which ſaid *R.* was Brother to the ſaid *William*, **Without that**, That the ſaid *K.* and *P.* are Siſters of the ſaid *William*, as by the ſaid Writ above is ſuppoſed; and this the ſaid *C.* and *F.* are ready to verify; wherefore they pray Judgment of the aforeſaid Writ, and that the ſame may be quaſh'd, *&c.*

That the Defendant is an Attorney of the Common Pleas.

And the aforeſaid *J. C.* in his proper Perſon comes and defends himſelf againſt the Force and Injury laid to his Charge, and pleads, That he, long before the ſaid *Dorothy*, exhibited her ſaid Bill, was, and ever ſince hath been, and now is an Attorney of his preſent Majeſty's Court of Common Bench at *Weſtminſter*, as by the Proceſs to this Plea annex'd, under the Seal of the ſame Court, may appear; and that he is proſecuting and defending divers Suits, Pleas, and Affairs of divers Leige People and Subjects of his preſent Majeſty, in the ſame Court of Common Bench, as their Attorney. And the ſaid *J.* avers, That he, and all other Attornies of the ſame Common Bench, by a laudable and ancient Cuſtom, and according to the Law of this Kingdom, and the Liberties and Privileges of the ſaid Common Bench, there, Time out of Mind uſed and approved of, ought not to be forced or compell'd to anſwer before any Juſtices, or other Officers of our ſaid Sovereign Lord the King, or other Judges whatſoever, in any Court, except before the Juſtices of the Common Bench of our ſaid Sovereign Lord the King at *Weſtminſter*, upon any Pleas or Complaints (Pleas of Freehold, Felonies and Appeals only excepted;) and this he is ready to verify; wherefore he prayeth Judgment, whether he ought to be compell'd to anſwer to the ſaid *Dorothy*, in the aforeſaid * Plea, *and ſo forth.*

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* The Defendant, ſtrictly ſpeaking, does not defend the Force and Injury, for that cannot properly be defended, but rather denies it, and therefore defends himſelf againſt the Charge of the Force and Injury by the Matter ſubſequent contain'd in his Plea, which is the Reaſon I have here ſaid, that the Defendant defends himſelf againſt the Force and Injury laid to his Charge; but if defending the Force and Injury may be underſtood to be the ſame as denying it, then the Reader may uſe the Words, *comes and defends the Force and Injury.*

A Plea to an Action brought by an Attorney, that he was forejudged.

And the aforeſaid *John*, by *John Schuldam*, his Attorney, and the aforeſaid *Henry*, by *Joſiah Nelſon* his Attorney, come and defend themſelves againſt the Force and Injury, and plead, That the ſaid *Robert* ought not to have an Anſwer to his ſaid Writ of Privilege, or to be admitted to have the Privilege of an Attorney of this Court, becauſe they aver (or ſhew) That the aforeſaid *Henry*, before the Iſſuing out of that ſame Writ (*to wit*) in *Trinity* Term, in the Second Year of the Reign of our Sovereign Lord the King that now is, came here into this Court, by *Joſiah Nelſon* his Attorney, and exhibited to the Juſtices here his Bill of Complaint, by the Name of *Robert L——* Gent. one of the Attornies of his ſaid preſent Majeſty's Court of Common Bench, preſent here in Court, in his proper Perſon, of a Plea of Debt (or in an Action of Debt) the Tenor of which Bill followeth here in theſe Words: To his Majeſty's Juſtices of the Common Bench, *Suffolk* (to wit) *Henry Blomfield*, by *Joſiah Nelſon*, his Attorney, complains of *Robert L——* Gent. one of the Attornies of his preſent Majeſty's Court of Common Bench, preſent here in Court, in his proper Perſon; for that the ſaid *Robert* doth unjuſtly detain, and hath not render'd to the ſaid *Henry* Forty Pounds, which he oweth him; for that whereas the aforeſaid *Robert*, the Twentieth of *April*, in the Second Year of the Reign of his preſent Majeſty, borrowed of the aforeſaid *Henry* the ſaid Forty Pounds, to be paid to him whenever he the ſaid *Robert* ſhould be thereto required. Nevertheleſs the ſaid *Robert*, altho' often required, hath not rendered to the ſaid *Henry* the ſaid Forty Pounds, but hitherto hath, and now doth altogether refuſe ſo to do; wherefore he declares That he is injured, and endamaged to the Value of Forty Pounds, and therefore brings his Suit, and the Pledges of proſecuting are *John Doe* and *Richard Roe*; whereupon, altho' it was Incumbent on the ſaid *Robert*, by Reaſon of his Office as an Attorney, to be here in Court, and tho' ſolemnly required to appear and attend in this Court, in his ſaid Office of an Attorney, yet he came not here into this Court, nor alledged to this Court any Reaſon for his Abſence; therefore it was conſidered, that the aforeſaid *Robert*, for his Contempt in this Particular, ſhould be fore-judged from executing his ſaid Office of an Attorney, and ſhould be entirely ſtruck out of the Roll of Attornies in this Court, until, *&c.* as by the Record and Proceedings thereof, remaining here in this Court, more fully may appear; which ſaid Judgment remaineth in its full Force and Effect, neither revoked, reverſed, vacated or annulled, by which the ſaid *Robert*, at the Day of iſſuing his ſaid Writ of Privilege, was, and before had, and ever ſince hath been, and now is entirely removed from and deprived of his ſaid Office of an Attorney of this Court, **Without that**, That the ſaid *Robert* is, or at the Day of iſſuing the aforeſaid Writ was, or at any Time ſince hath been an Attorney of this Court, as by the ſaid Writ above is ſuppoſed; and this he is ready to verify; wherefore he prayeth Judgment, whether the ſaid *Robert* ought to receive any Anſwer to his Writ aforeſaid, or be admitted to have his Privilege of this Honourable Court, *&c.*

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* I apprehend it very proper, to preſerve the Word *Plea* here, in this and ſeveral other Places hereafter, as a Technical Term of Art, and well underſtood by the Profeſſion; for *Placitum* ſometimes ſignifies the Subſtance of the Defendant's Defence, or of the Plaintiff's Reply thereto, and ſo of the Defendant's Rejoinder, they are all call'd *Placita*: But here in this and ſeveral other Inſtances, it ſignifies the very Controverſy or Matter in Variance. As in *Lutt.* 25. where the Defendant concludes his Plea, that he ought not to anſwer *in Placito præd.* (that is) *in the ſaid Plea, or Action*; ſo in a Prohibition it is mentioned in the *Gravamen*, that the Defendant *traxit* the Plaintiff *in Placitum* into the Court Chriſtian, *i. e.* drew him into a Suit or Controverſy.

Plea, Adminiſtrators, and not Executors.

And the aforeſaid *R.* by *J. M.* his Attorney, comes and defends himſelf againſt the ſaid Charge of the Force and Injury, and pleads That the ſaid *John Heard*, on the Fifth Day of *December*, in the Year of our Lord One Thouſand Six Hundred Ninety-four, at *London* aforeſaid, in the ſaid Pariſh and Ward, died inteſtate; after whoſe Death, Adminiſtration of all and ſingular the Goods and Chattels, Rights and Credits, which were the Property of the ſaid *J. H.* at the Time of his Death, by the Worſhipful Sir *Charles Hedges*, Knight, Doctor of Laws, lawfully conſtituted Commiſſary and Sequeſtrator General to the Reverend Father in Chriſt, *Henry* by Divine Permiſſion, Lord Biſhop of *London*, in the Diviſions of *Eſſex* and *Hertfordſhire*, to whom the Commiſſion of Adminiſtration aforeſaid then did and now doth of Right belong) on the Eighth Day of *February*, in the Year of our Lord One Thouſand Six Hundred Ninety-four, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, was granted to the ſaid *R. Heard*, in due Form of Law; in which Caſe the aforeſaid *E.* and *M.* ought to have named the ſaid *Robert* in the ſaid Writ, as Adminiſtrator of the Goods and Chattels which were the Property of the ſaid *J. H.* and not Executor of the Laſt Will and Teſtament of the ſaid *J. H.* and this he is ready to verify; wherefore he prayeth Judgment of the aforeſaid Bill, and that the ſame may be quaſhed, *&c.*

A Plea of Privilege, that the Defendant is a Filazer of the King's Bench.

And the aforeſaid *J.* in his proper Perſon comes and defends the Force and Injury, and pleads, That in *Eaſter* Term, in the Fifth Year of the Reign of our late Sovereign Lord *William* the Third, and our late Sovereign Lady *Mary*, late King and Queen of *England*, &c. on *Tueſday* next after Fifteen Days of *Eaſter*, that ſame Term, Sir *John Holt*, Knight, then the Chief Juſtice, aſſign'd to hold Pleas in the Court of our ſaid late Sovereign Lord and Lady, the late King and Queen, before themſelves, * *Gratis*, Gave and granted to the ſaid *J. W.* the Office of Filazer in the Court of the ſaid late King and Queen, before themſelves, and then and there admitted the ſaid *J. W.* to the ſame Office of Filazer, of the County of *Salop*, to have and to hold to him as his Freehold, for the Term of his Life, according to the Cuſtom of the ſaid Court uſed and approved of in the Time of the ſaid King and Queen, and that Inſtant placed and inſtituted the ſame *James Woodhouſe* into the perſonal Poſſeſſion of the ſaid Office, the ſaid *James Woodhouſe* having taken as well the Oath of Allegiance to the ſaid late King and Queen, according to the Form of the Statute in ſuch Caſe made and provided, as alſo the uſual Oath by him firſt to be taken, well and faithfully to carry and behave himſelf in that Office; to have, occupy and enjoy the ſame in the Manner aforeſaid, together with all Fees, Advantages and Profits to the ſame Office incumbent, and anciently due and accuſtom'd to be paid, as by the Record of the ſaid Grant and Admiſſion remaining in the Court of our Sovereign Lord the King that now is, before the King himſelf, may appear; by Virtue of which Grant and Admiſſion, he the ſaid *James*, long before, and at the Day of the iſſuing of the Original Writ aforeſaid, was, and now is a Filazer of the ſaid Court of King's Bench, as aforeſaid. And the ſaid *J.* further pleads, That Time out of Mind, ſuch Filazers of the ſaid Court of our ſaid Sovereign Lord the King here, according to the Cuſtom of the ſame hitherto uſed and approv'd of in the ſame Court, have been accuſtom'd to be impleaded in all Perſonal Actions, at the Suit of any Subject of our Sovereign Lord the King, and his Predeceſſors, Kings and Queens of this Kingdom, by Bill exhibited in the ſaid Court, before the King himſelf, againſt ſuch Filazers preſent in the ſame Court, in their proper Perſons; and of Right ought ſo to be; and this he is ready to verify; wherefore, he prays Judgment, if this Court of our ſaid Sovereign Lord the King will here take any further Cognizance of the aforeſaid Plea againſt the ſaid *J.* *&c.*

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* The Word *Gratis* is by common Uſe made an *Engliſh* Phraſe of Speech, and by every one underſtood to ſignify without Fee or Reward; and therefore I thought fit here to make uſe of it in this, and ſeveral other Inſtances of the like Nature.

Ferrers againſt Williams.

And the aforeſaid *Frances*, by *Sylveſter Petit*, her Attorney, comes and defends the Force and Injury, and pleads, That true it is, that the ſaid *William White*, on the Eighteenth Day of *November*, in the Third Year of the Reign of his preſent Majeſty King *Charles* the Second, at *Baſhall* aforeſaid, died ſeiſed of the Reverſion of the ſaid Tenements mention'd in the ſaid Writ, without any Iſſue of his Body begotten upon the Body of the ſaid *Frances*; and that the ſaid *John Ferrers* is Couſin and Heir to the ſaid *William*, in ſuch Manner and Form as he the ſaid *John Ferrers* doth by his Writ and Declaration above ſuppoſe. But the ſaid *Frances* in her Defence, further pleads, That the ſaid *William White*, being ſeiſed of the Reverſion of the ſaid Tenements, with the Appurtenances, in the Manner aforeſaid, he the ſaid *William White*, on the Sixth Day of *September*, in the Year of our Lord One Thouſand Six Hundred Sixty-ſix, at *Baſhall* aforeſaid, made his Laſt Will and Teſtament in Writing, and thereby directed and appointed, That if he ſhould have Iſſue of his Body, ſuch Iſſue ſhould have and enjoy all his real Eſtate in his Manors, Lands, Tenements and Hereditaments; and for Default of ſuch Iſſue, that then all his Manors, Lands, Tenements and Hereditaments ſhould come and remain to his Nephew *John Ferrers*, (the now Plaintiff) and to the Heirs of his Body; and for Default of ſuch Iſſue, to his Nephew *Philip Ferrers*, and the Heirs of his Body; and for Default of ſuch Iſſue, to his Nephew *George Newton*, his Heirs and Aſſigns for ever; and afterwards, (*to wit*) on the Eighteenth Day of *November*, in the Thirteenth Year of the Reign of his preſent Majeſty, at *Baſhall* aforeſaid, he the ſaid *William White* died ſeiſed of the Reverſion mentioned in the ſaid Writ, without having any Iſſue of his Body begotten, after whoſe Death, ſhe the ſaid *Frances* enter'd into the Tenements and Premiſſes aforeſaid, with the Appurtenances, and was, and now is thereof ſeiſed in her Demeſne as of a Freehold, for the Term of her Life; and the aforeſaid *John Ferrers*, by Virtue of the aforeſaid Deviſe, became, was, and now is ſeiſed of the ſaid Reverſion in his Demeſne, as of a Fee-tail (*to wit*) to him, and the

Plea in Abatement, by which the Defendant confeſſeth the Death of William White without Iſſue, and that the Plaintiff was Couſin and Heir; but further ſaith, that the ſaid William White, the Sixth of September, 1660 by his Will deviſed all the Lands, &c. to the Plaintiff in Tail, with ſeveral Remainders over; that the Plaintiff, by the Death of the ſaid William White, was ſeiſed of the Reverſion in Tail. Lutw. 1557.

the Heirs of his Body iſſuing, **Without that**, That the Tenements aforeſaid, after the Death of the ſaid *William White*, deſcended to the ſaid *John Ferrers*, as Couſin and Heir to the ſaid *William White*, as by the Declaration above is ſuppoſed; and this he is ready to verify; wherefore he prays Judgment of the ſaid Writ, and that the ſame may be quaſhed, &c.

And traverſeth the Diſcent to the Plaintiff alledged in the Court.

The Statute of Additions pleaded.

And the aforeſaid *J.* and *J.* in their proper Perſons, come and defend the Force and Injury, and pray Judgment of the aforeſaid Writ, becauſe they plead That according to the Form of the Statute of Additions in Writs, in which Proceſs of Outlawry lieth, the Addition of the Vill, Hamlet, Place and County of the Commorancy of the ſaid *John* ought to have been expreſſed in the ſaid Original Writ of the ſaid *Thomas*; and this he is ready to verify; wherefore, inaſmuch as ſuch Addition is not expreſſed in this Writ, the ſaid *J.* and *J.* pray Judgment of the ſaid Writ, and that the ſame may be quaſhed, &c.

Abatement in Quare Impedit, **that the Patron is not named in the Writ with the Parſon.** 2 Lut. 1088.

And the aforeſaid *Ch.* by *F. Gibſon*, his Attorney, comes and defends the Force and Injury, and prays Judgment of the aforeſaid Writ, becauſe he pleads, That he is, and at the Time of iſſuing the aforeſaid Original Writ was, and long before had been a Parſon of the ſaid Church, inducted into the ſame, on the Preſentation of *Iſaac Welham*, Gent. And the ſaid *C.* hath not, nor claimeth to have any Thing in the Advowſon of the ſaid Church, or in the ſaid Church, but as Parſon thereof, inducted therein, on the Preſentation of the ſaid *J——* which ſaid *J——* is now alive, and in perfect Health, (to wit) at *Thornton* aforeſaid; and this he is ready to verify; wherefore, inaſmuch as the ſaid *Iſaac* is not named a Defendant together with the ſaid *Ch.* in the aforeſaid Writ, he prays Judgment of the ſaid Writ, and that the ſame may be quaſhed.

Brown and Deeble.

Special Imparlance.

And now here at this Day, (to wit) on *Wedneſday* next after 15 Days of *Eaſter*, this ſame Term, ('till which Day the aforeſaid *H.* ſaving to himſelf all and all Manner of Exceptions as to the ſaid Bill of the aforeſaid *E.* as to the ſaid Declaration, had Leave to Imparl, and then to anſwer, &c. before which Day our ſaid late Sovereign Lady the Queen departed this Life) comes as well the ſaid *Edward*, by his Attorney aforeſaid, as the ſaid *H.* by *R. S.* his Attorney; and the ſaid *H.* defends the Force and Injury, and pleads, That he the ſaid *H.* ought not to be compelled to anſwer to the ſaid Writ, becauſe he avers, That the ſaid *Edward* lately (to wit) in *Trinity* Term laſt paſt, in his preſent Majeſty's Court of Common Bench at *Weſtminſter*, impleaded the aforeſaid *H.* in a certain Plea of Treſpaſs upon the Caſe, and for the ſame Cauſe in the Declaration abovementioned, as by the Record thereof, now remaining in the ſame Court of Common Bench, may appear; and that the Parties aforeſaid, to and in the ſaid Plea, in the ſaid Court of Common Bench, and the aforeſaid *E. B.* the now Plaintiff, and the ſaid *H. D.* are the ſame, and not different Perſons; and that the Plea aforeſaid, now remains undetermin'd in the ſame Court of Common Bench; and this he is ready to verify; wherefore, he prays Judgment, whether

The Demiſe of the Queen.

Plea of another Action depending in the Common Pleas. Lilly 7.

whether he ought to be compelled to make any Anſwer to the aforeſaid Writ, *&c.*

Miſpriſion of Commorancy.

And the ſaid *Alexander*, by *John Morgan*, his Attorney, comes and defends the Force and Injury, and prays Judgment of the ſaid Writ, becauſe he pleads, That he now doth, and at the Day of ſuing out the ſaid Original Writ of the aforeſaid *C.* did, and for many Years before had, and ever ſince hath inhabited and dwelt in the Pariſh of St. *Dunſtan's* in the Weſt, in *London*, **Without that**, That he the ſaid *A.* at the Day of ſuing out the ſaid Writ, did, or at any Time before or ſince had, or now doth inhabit and dwell in the Pariſh of St. *Clements Danes*, in the County of *Middleſex*, as the ſaid *C.* doth above ſuppoſe by his ſaid Writ; and this he is ready to verify; wherefore, he prays Judgment of the ſaid Writ, and that the ſame may be quaſhed, *&c.*

Abatement for a Variance between the Writ and the Count, for that he brings the Writ as a Knight and Baronet, and Counts as an Eſq;

And the aforeſaid *L.* by *William Stibbs*, his Attorney, comes and defends the Force and Injury, and craves *Oyer* of the Writ aforeſaid, and it is read to him in theſe Words, *George*, &c. [*reciting the Writ*] which being read and heard, he the ſaid *L.* prays Judgment of the Writ aforeſaid, becauſe he pleads, That between the Writ and the Declaration aforeſaid, there is a manifeſt Variance, for that the ſaid *J.* hath brought his Writ aforeſaid againſt him the ſaid *L.* by the Name of *L. B.* Knight and Baronet, and declared againſt him upon that Writ, by the Name of *L. B. Armiger*; and not by the Name of *L. B.* Knight and Baronet, as the ſaid *J.* ought to have declared; and this he is ready to verify; whereupon, the ſaid *B.* for the Variance aforeſaid, prays Judgment of the Writ, and that the ſame may be quaſhed, *&c.*

To an Action brought by a Feme Sole, the Defendant pleads in Abatement of the Writ, that the Plaintiff is Covert of J. B. at the Day of the Writ purchaſed.

And the aforeſaid *Richard*, by *J. M.* his Attorney, comes and prays Judgment of the Writ aforeſaid, becauſe he avers, That the aforeſaid *Elizabeth*, on the Day of her obtaining of the ſaid Original Writ (that is to ſay) on the Firſt Day of *June*, in the Sixth Year of the Reign of our Sovereign Lord the King, was, and ever ſince hath been, and now is, Covert of one *John Bland*, her Huſband, (that is to ſay) at *London*, in the Pariſh and Ward aforeſaid; and this he is ready to verify; wherefore, he prays Judgment of the Writ aforeſaid, ſued out by the ſaid *Elizabeth*, by the Name of *Elizabeth S.* Widow, as a Feme Sole, and that the ſame may be quaſh'd, *&c.*

Abatement of the Original Writ in Quare Impedit.

And the aforeſaid Biſhop, and the ſaid *J. K.* come and crave *Oyer* of the Original Writ, and it is read to them in theſe Words, *George, &c.* [*reciting the Writ*] which being read and heard, they the ſaid *Biſhop* and *J. K.* pray Judgment of that Writ, becauſe they plead that the ſame Writ doth not agree with the Form of the Writ in the Regiſter, in ſuch Caſe ordained and provided, for that they aver, that the ſaid Writ wants this Word (*unjuſtly*); and this they are ready to verify; whereupon, (or) *for which Reaſon* they pray Judgment of that Writ, and that the ſame may be quaſh'd, *&c.*

Bartelot againſt Burton.

Replication to a Plea of Coverture, that the Defendant is concluded by Way of Eſtoppel, by Reaſon of her Imparlance. Lutw. 23.

And the ſaid *Henry* replies, That the ſaid *Anne*, notwithſtanding any Thing above alledged, ought to anſwer to his ſaid Writ, becauſe he avers, that the ſaid *Henry*, in *Hillary* Term laſt paſt, impleaded the ſaid *Anne* in the Plea aforeſaid, here in his Majeſty's Court of Common Bench; and the ſaid *Henry* there declared, in the ſame *Hillary* Term, againſt the ſaid *Anne* in the ſame Court, in the aforeſaid Plea; and the ſaid *Anne*, in the ſame *Hillary* Term, by the aforeſaid *Peter Budger*, her Attorney, came and defended the Force and Injury when, *&c.* and then pray'd Leave to imparle to the ſaid Declaration until Fifteen Days from *Eaſter*, then next following, and ſuch Leave ſhe had accordingly; the ſame Day was given to the ſame *Henry* here, *&c.* as by the Record and Proceedings thereof, now remaining here in this Court, may appear; and the aforeſaid *Anne*, at the aforeſaid Fifteenth Day from *Eaſter*, pleaded in the Manner and Form aforeſaid. And the ſaid *Henry* avers, That the ſaid Plea, in the Manner and Form above pleaded, after the ſaid Leave to imparl, and the Matter therein contain'd, are not ſufficient in Law to preclude the ſaid *Henry* from having a proper Anſwer to his ſaid Writ, to which ſaid Plea, he the ſaid *Henry* is under no Neceſſity to anſwer thereto, in any other Manner howſoever; and therefore, the ſaid *Henry* prays Judgment, and that the ſaid *Anne* may further anſwer to the Writ aforeſaid, *&c.*

A Plea in Abatement of the Writ, that there is no ſuch Town or Hamlet, to a Qui Tam.

And the ſaid *John Laſcells*, of *Attleburgh*, in the County of *Norfolk*, Eſq; and *Anne* his Wife, by *Robert Martin*, their Attorney, come and plead, That they are the ſame Perſons againſt whom the aforeſaid *Lewis*, who ſueth in this Caſe, as well for our Sovereign Lord the King as for himſelf, brought his Writ aforeſaid, by the Name of *John Laſcells*, late of *Addlebury* in the County of *Norfolk*, Eſq; and *Anne* his Wife, and they pray Judgment of the Writ aforeſaid, becauſe they aver, that in the aforeſaid County of *Norfolk* there is not, or at the Day of ſuing out the Original Writ of him the ſaid *Lewis* who ſueth in this Caſe, as well, *and ſo forth*, was, or at any Time before had there been any ſuch Town, Hamlet, or any other Place known or called by the Name of *Addlebury*, as the aforeſaid *Lewis*, who, *and ſo forth*, doth by his Writ aforeſaid ſuppoſe; and this they are ready to verify; whereupon, inaſmuch as the ſaid *John Laſcells*, and *Anne*, are not named in certain of what Town or Hamlet the ſaid *John* and *Anne* were, or are inhabiting, according to the Form of the Statute in ſuch Caſe made and provided, they pray Judgment of that Writ, and that the ſame may be quaſh'd, *&c.*

Miſnomer in the Surname. 4 Mod. 347. 6 Mod. 115. 1 Salk. 6, 75. Mod. Caſes 289. Lilly 1.

Robert Syms, againſt whom the ſaid *T. H.* hath exhibited his aforeſaid Bill, by the Name of *Robert Symonds*, by *J. L.* his Attorney, comes and defends the Force and Injury, and prays Judgment of the aforeſaid Bill, becauſe he pleads that he is the ſame Perſon againſt whom the aforeſaid *T. H.* hath exhibited his ſaid Bill, by the Name of *Robert Symonds*; and that he now is, and at the Time of the Exhibiting the ſaid Bill was, and from the Time of his Nativity always hitherto hath been called and known by that Name and Sirname (*to wit*) at *London* aforeſaid, in the Pariſh and Ward aforeſaid, **Without that,** That he now is, or at the Time of Exhibiting the ſaid Bill againſt him, was, or at any Time before had or ſince hath been call'd or known by the Name of *Robert Symonds*, as the ſaid *T.* in his ſaid Bill hath alledged; and this he is ready to verify; and therefore prayeth Judgment of the aforeſaid Bill, and that the ſame may be quaſhed, *&c.*

Raper at the Suit of Swaine.

Plea that the Plaintiff is an Alien Enemy. 1 Salk. 2,46. Lilly 1.

And the aforeſaid *Edward*, by *T. S.* his Attorney, comes and defends the Force and Injury, and pleads, that the ſaid *Edward* is not Entitled to an Anſwer to the aforeſaid Bill, becauſe he avers that the ſaid *Edward* is an Alien, born at *Callis*, in the Kingdom of *France*, in Parts beyond the Seas, under the Ligeance of *Lewis* the *French* King, an Enemy to our Sovereign Lord, now King of *Great Britain*, &c. born of a Father and Mother Adherents to the Enemies of our ſaid Sovereign Lord the King. And the ſaid *Edward* came hither into *England* without the ſafe Conduct of our ſaid Sovereign Lord the King. And this he is ready to verify; whereupon he prays Judgment whether he ought to anſwer to the aforeſaid Bill, *&c.*

Brackley againſt Stanton.

Coverture pleaded. Mod. Caſes, 230. Ray. 395.

And the aforeſaid *Sarah*, in her proper Perſon, comes and prays Judgment of the aforeſaid Bill of the ſaid *William*, becauſe ſhe avers, That ſhe the ſaid *Sarah*, at the Time of Exhibiting of the ſame Bill of the ſaid *William* againſt the ſaid *Sarah*, was Covert of *J. W.* then and now being her Husband, and actually alive (*to wit*) at *Iſlington* aforeſaid, in the County aforeſaid; and this the ſaid *Sarah* is ready to verify. And by Reaſon the ſaid *J. W.* is not nam'd in the aforeſaid Bill, ſhe the ſaid *Sarah* prays Judgment of the aforeſaid Bill, and that the ſame may be quaſh'd, *&c.*

A Replication thereto.

And the ſaid *William* replies, That the ſaid Bill of the aforeſaid *William* ought not to be quaſhed for any Thing by the ſaid *Sarah* above in Pleading alledg'd; becauſe he avers, That the ſaid *Sarah*, at the ſaid Time of the Exhibiting the ſaid Bill (*to wit*) on the Twenty-third Day of *October*, in the Fifth Year of the Reign of his preſent Majeſty *George* the Second, King of *Great Britain*, &c. (*to wit*) at *Iſlington* aforeſaid, in the County aforeſaid, was ſole and uncovert with the ſaid *J. W.* **Without that,** That the aforeſaid *Sarah*, at the aforeſaid Time of Exhibiting the aforeſaid Bill was, or at any Time afterwards hath been Covert of the aforeſaid *J. W.* her Husband, in ſuch Manner and Form as the ſaid *Sarah* above in pleading hath alledged; and this he is ready to verify; wherefore he prays Judgment, and his ſaid Debt, together with his Damages, occaſion'd by detaining the ſame to be adjudg'd to him, *&c.*

Levett at the Suit of the College of Phyſicians, of *London*.

Miſnomer of Addition of Degree. 1 Salk. 7.

And the aforeſaid *L.H.* by *R. S.* his Attorney, comes and prays Judgment of the aforeſaid Bill, becauſe he pleads, That the aforeſaid *H.* long before the Time of Exhibiting the aforeſaid Bill, had been, then was, and now is a Doctor of Phyſick, duly made ſo by the Univerſity of *Oxford*, (*to wit*) at *London* aforeſaid, in the Pariſh and Ward aforeſaid; wherefore, inaſmuch as he the ſaid *Henry* is not named a Doctor of Phyſick in the aforeſaid Bill, he prays Judgment thereof, and that the ſaid Bill may be quaſh'd, *&c.*

Abatement, that the Defendant ſealed the Bond jointly with E.F. and G. who are not named. 5 Mod. 144. Lilly 2.

And the aforeſaid *T. S.* by *Robert Martin*, his Attorney, comes and defends the Force and Injury, and craves Oyer of the aforeſaid Writing Obligatory, and it is read to him in theſe Words, ſſ. *Noverint univerſi per preſentes*, [here recite the Bond] which being read and heard, the ſaid *T. S.* prays Judgment of the aforeſaid Writ, becauſe he avers, That at the aforeſaid Time of the Sealing and Delivery of the aforeſaid Writing Obligatory, whereon the aforeſaid Plaintiff complains againſt the ſaid Defendant; (that is to ſay) upon the ſaid Second Day of *May*, in the Fifth Year of the Reign of his preſent Majeſty *George* the Second, King of *Great Britain*, &c. in the ſaid Declaration above-mentioned, at *Lewes* aforeſaid, in the County aforeſaid, the aforeſaid *E.F.* and *G.H.* nam'd in the ſaid Writing Obligatory, together with the ſaid *T. S.* likewiſe Sealed and Delivered the ſaid Writing Obligatory, as the joint Act and Deed of the ſaid *E. F. G. H.* and the ſaid *T. S.* and thereby became firmly bound jointly to the aforeſaid Plaintiff, in the aforeſaid One Hundred Pounds, which ſaid *E. F.* and *G. H.* are now actually alive. Wherefore, inaſmuch as the ſaid *E. F.* and *G. H.* are not joined Defendants together with him the aforeſaid *T. S.* in the Declaration mentioned, the ſaid *T. S.* prays Judgment of the ſaid Writ, and that the ſame may be quaſh'd, *&c.*

Moller and Iſted.

Another Action pending in the ſame Court. 2 Salk. 715. Moor 539. 8 Co. 118. 2 Ven. 170. 2 Cro. 481. Noy 82. Bird 122. 5 Co. 61.

And the aforeſaid *T.* in his proper Perſon comes and defends the Force and Injury, and prays Judgment of the aforeſaid Bill, becauſe he pleads, That the aforeſaid *J.* here in this Court lately (*to wit*) in *Eaſter* Term laſt paſt, brought his Writ againſt the ſaid *T.* of the Plea aforeſaid, and thereupon the ſaid *J.* in declaring againſt the ſaid *Thomas*, by the Name of *T. J.* late of *London*, Gent. then and there appearing at the Suit of the ſaid *J.* in the aforeſaid Plea (or Action) *Did complain, That whereas* [and ſo ſet forth the Declaration] as by the ſaid Record thereof, now remaining here in this Court may appear; which ſaid Plea, (or Action) iſſued upon the aforeſaid Writ, in Form aforeſaid, is yet pending here in this honourable Court at *Weſtminſter* aforeſaid, undiſcuſſed, undetermined, and not diſcontinued. And the ſaid *T.* further pleads, That the aforeſaid *J. M.* named in the aforeſaid Declaration, and the aforeſaid *J. M.* named in the aforeſaid Bill, now Exhibited againſt him the ſaid *T. J.* are one and the ſame, and not different Perſons;

And That the ſaid *T. J.* in the aforeſaid Declaration and Plea named, and the aforeſaid *T. J.* mention'd in the ſaid Bill exhibited againſt the ſaid *T. J.* are one and the ſame, and not different Perſons. And the aforeſaid *T. J.* further ſaith, That the Cauſe of Action in the aforeſaid Declaration above pleaded mention'd, and the Cauſe of Action, of which the ſaid *J.* now complaineth againſt the ſaid *T.* are one and the ſame, and not different Cauſes of Action; wherefore he prayeth Judgment of the aforeſaid Bill Exhibited in Form aforeſadi, and that the ſame may be Quaſh'd, *and ſo forth.*

Carter at the Suit of Bennett.

And the aforeſaid *Anne*, who is within the Age of Twenty-one Years, by *R. C.* her Guardian (in a ſpecial Manner admitted by the Court of our ſaid Sovereign Lady the now Queen) here comes and prays Judgment of the aforeſaid Bill, becauſe ſhe ſaith, That ſhe the aforeſaid *Anne*, at the Day of Exhibiting the aforeſaid Bill, was, and now is within the Age of Twenty-one Years, (that is to ſay) of the Age of Nineteen Years, and no more; (*to wit*) at *London* aforeſaid, at the Pariſh and Ward aforeſaid; and that the aforeſaid *H.* doth not proſecute her ſaid Bill againſt the ſaid *A.* either by her next Friend, or by her Guardian. And this ſhe is ready to verify; and therefore prayeth Judgment of the aforeſaid Bill, and that the ſame may be Quaſh'd, *and ſo forth.*

Infancy pleaded by Guardian. Lilly 3.

And the aforeſaid *J.* in his proper Perſon comes and ſays, That he was, at the Day of Exhibiting of the aforeſaid Bill of the aforeſaid *Thomas*, and for divers Years before, had been, and now is an Attorney of the Court of Common Bench of our ſaid Sovereign Lady the Queen, attending divers Affairs of ſeveral of her ſaid Majeſty's Liege People, in proſecuting and defending ſeveral Suits for them as their Attorney; and that the ſaid *J.* and all other Attornies of the ſaid Court of Common Bench, while they are ſo proſecuting and defending ſuch Affairs and Suits of their Clients, (according to the Cuſtom in the ſame Court of Common Bench at *Weſtminſter*, Time out of Mind hitherto uſed and approved of) ought not to be drawn or compell'd againſt their Wills to anſwer before any Juſtices or Officers of our ſaid Lady the Queen, or other Secular Judges whatſoever (except before the Juſtices of the ſaid Common Bench at *Weſtminſter*, upon any Pleas, Plaints, or Demands (except only Pleas of Freehold, Felonies and Appeals.) And this he is ready to verify; and therefore prayeth Judgment, whether this Honourable Court ought to take any Cognizance of the Plea aforeſaid againſt him, *and ſo forth.*

Plea to the Juriſdiction of the Court, That the Defendant is an Attorney of the Common Pleas. Lilly 9.

Frampton at the Suit of Nourſe.

And the aforeſaid *C. F.* by *J. L.* his Attorney, comes and prays Judgment of the aforeſaid Writ of *Scire Facias*, becauſe he ſaith, That after the giving the aforeſaid Judgment in the aforeſaid Writ above-mention'd, that is to ſay, the Sixteenth Day of *November*, in the Sixth Year of the Reign of our late Sovereign Lord *William* the Third, and Lady *Mary*, late King and Queen of *England*,

A Writ of Error pending in the Exchequer Chamber pleaded to a Scire Facias, **why Execution ought not on the Judgment,** &c. Lilly 3.

land, at *Weſtminſter* aforeſaid, in the County aforeſaid, he the ſaid *Ch. F.* for reverſing of the aforeſaid Judgment, had proſecuted out of the Court of Chancery of the ſaid late King and Queen, then held at *Weſtminſter* in the ſaid County of *Middleſex*) their ſaid late Majeſties Writ for correcting Errors of and upon the Judgment aforeſaid, in the ſaid Writ ſpecify'd, directed to Sir *John Holt*, Knight, their ſaid Majeſties Chief Juſtice, aſſign'd to hold Pleas in their Court, before the ſaid King and Queen themſelves, and returnable on *Tueſday* the Twenty-ſeventh Day of the ſaid *November*, then next following, in the Court of Exchequer of the ſaid late King and Queen, before the Juſtices of the Common Bench, and the Barons of the Exchequer of the ſame King and Queen, (of the Degree of the Coiſe,) according to the Form of the Statute in that Caſe made and provided; which ſaid Writ, after the Iſſuing, and before the Return thereof (to wit) the Twentieth Day of the ſame *November*, in the aforeſaid Sixth Year of the Reign of the ſaid late King and Queen at *Weſtminſter* aforeſaid, in the ſaid County of *Middleſex*, was deliver'd to the aforeſaid Sir *John Holt*, Chief Juſtice aforeſaid, to be Executed in due Form of Law; which ſaid Sir *John Holt*, Chief Juſtice aforeſaid, hath not returned the aforeſaid Writ for correcting Errors into the aforeſaid Exchequer-Chamber, and hath done nothing thereon; and this he is ready to verify; wherefore he prayeth Judgment, if he the ſaid *Ch.* ought to be compell'd to anſwer to the aforeſaid Writ of *Scire Facias*, pending the aboveſaid Writ of Error, *and ſo forth*.

By miſtaking the County.

And the aforeſaid *J.* by *J. A.* his Attorney, comes and defends himſelf againſt the ſaid Charge of Force and Injury, and ſaith, That the Liberty of *Bury St. Edmond's* is, and Time out of Mind hath been in the County of *Suffolk*, and not in the County of *Middleſex*, as by the Bill of the ſaid *J. C.* above is ſuppoſed; and this he is ready to verify; wherefore he prayeth Judgment of the aforeſaid Bill, and that the ſame may be Quaſh'd, *and ſo forth*.

Miſnomer in the Stile of a Corporation.

And the ſaid *B.* by *J. N.* his Attorney, comes and defends himſelf againſt the Force and Injury above laid to his Charge, and prayeth Judgment of the aforeſaid Bill, becauſe he ſaith, That the aforeſaid Plaintiffs are nam'd and call'd the Maſter and Wardens, or Guardians and Commonalty of the Myſtery and Art of Stationers of the City of *London*, and by that ſame Name and Title have always been nam'd and call'd, **Without that**, That they are nam'd or call'd the Maſter and Wardens, or Guardians of the Myſtery and Art of Stationers of the City of *London* aforeſaid, as by the ſaid Bill above is ſuppoſed; and this he is ready to verify; wherefore he prayeth Judgment of the aforeſaid Bill, and that the ſaid Bill may be Quaſh'd, *and ſo forth*.

Draycott againſt Curzon.

Hill. 11 *W.* 3. *Rot.* 512.

Plea in Abatement that the Defendant is Waiveed. Lut. 39.

And the aforeſaid *N.* by *J. H.* his Attorney, comes and ſays, That the aforeſaid *Jane* is not entitled to an Anſwer to her ſaid Demand, becauſe ſhe ſaith, That *T. N.* lately, (*to wit*) in *Trinity* Term, in the Ninth Year of the Reign of our Sovereign Lord the King, that now is, impleaded the aforeſaid *Jane*, by the Name of, (*and ſo forth*) here in his Majeſty's Court of Common Bench, of a Plea of Debt of Three Hundred and Forty Pounds upon Demand; And that the aforeſaid *Jane*, for that ſhe did not come into the aforeſaid Court of Common Bench, there to make Anſwer to the ſaid *N.* thereto, according to the Laws and Cuſtoms of this Kingdom of *England*, was put in *Exigent* to be waived in *London*; and for that Reaſon afterwards, (*to wit*) on *Monday* next after the Feaſt of the Purification of the Bleſſed Virgin *Mary*, in the Ninth Year of the Reign of his preſent Majeſty, in *London* aforeſaid, the ſaid *Jane* was, and now is, in due Form of Law, waived at the Suit of the aforeſaid *N.* in a Plea of Debt, as by the Record and Proceedings thereof here in this Court more plainly may appear: And this he is ready to verify; wherefore, he prayeth Judgment, if ſhe the ſaid *Jane* is entitled to have any Anſwer made to her ſaid Demand; together with this, that he the ſaid *N.* is ready to make appear, that the Record aforeſaid remains in its full Strength, Force and Effect, neither revoked, reverſed, pardoned, or annulled.

It was objected, That this Plea ought to have been pleaded ſub pede Sigilli, *but 'twas anſwered, and ſo reſolved by the Court, That the Outlawry being pleaded in the ſame Court, it need not be pleaded* ſub pede Sigilli, *but otherwiſe if it had been pleaded in another Court.*

Plea in Abatement, becauſe the Plaintiff is a Popiſh Recuſant Convict. Clift. 3.

And the aforeſaid *Robert*, by his Attorney, comes and defends himſelf againſt the Force and Injury, and ſaith, That the aforeſaid *Roger* is not entitled to an Anſwer to his Bill aforeſaid, becauſe he ſaith, that the aforeſaid *Roger* is convicted of Popiſh Recuſancy, and not long ſince, according to the Form of the Statute in that Caſe made and provided, was convicted at a Gaol-Delivery of *Newgate*, of our late Sovereign Lord *Charles* the Second, late King of *England*, held for the County of *Middleſex* at Juſtice-Hall in the Suburbs of the ſaid City on *Tueſday* the Thirteenth Day of *April*, in the Thirty-third Year of the Reign of the ſaid late King, before Sir *William Dolbin*, Knight, one of the Juſtices of his ſaid late Majeſty, aſſigned to hold Pleas before the ſaid late King himſelf, Sir *Creſwell Levinz*, Knight, one of the Juſtices of the ſaid late King of Common Bench, Sir *George Treby*, Knight, Recorder of the City of *London*, and others their Companions, then Juſtices of the ſaid late King, to deliver his Gaol from Priſoners, (being there at that Time) upon an Indictment againſt the ſaid *Roger*, by the Name of *Roger* Earl of *Caſtlemain*, late of the Pariſh of St. *Martin in the Fields*, in the County of *Middleſex*, for that he the Twenty-third Day of *December*, in the Thirty-ſecond Year of the Reign of the ſaid late King *Charles* the Second, was of the Age of Sixteen Years and upwards, and did not repair to his Pariſh Church aforeſaid, nor to any other Church or Place of Common Prayer, nor was there at the Time of Common Prayer for two Months next following the ſaid Twenty-third Day of *December*, in the Thirty-ſecond Year aforeſaid, but had forborn the ſame from the ſaid Twenty-third Day of *December*, in the Thirty-ſecond Year aforeſaid, for the Space of two Months then next following, contrary to the Tenor of the Statute in ſuch Caſe made and provided, and contrary to the Peace of the ſaid late King, his Crown and Dignity; and the ſaid *Roger* was convicted, which ſaid conviction was continued and certified from the ſame Court of Gaol-Delivery into his ſaid late Majeſty's Court of Exchequer at *Weſtminſter*, in the County of *Middleſex*, according to the Form of the Statute in ſuch Caſe made and provided, and now remaineth in his preſent Majeſty's Court of Exchequer of Record, in its full Strength, Force and Effect, not reverſed or annulled, as by that Record in the ſame Court of Exchequer at *Weſtminſter*, more fully may appear; And this he is ready to verify, and bringeth here into Court the Exemplification of the ſaid Conviction, ſealed with the Seal of the ſame Court of Exchequer, which teſtifieth this to be true; and prayeth therefore that the ſame Plaint may remain without a Day, *and ſo forth*.

Morton and **Dawſon**, and others, Tertenants of **Parway**, at the Suit of **Jeffreſon**, Executor of **Jeffreſon**.

Paſch. 21 *Car.* 2. *Rot.* 291.

Plea in Abatement that one of the Ter-tenants is not ſummoned. 2 Saund. 8.

And the aforeſaid *J. M. H. W.* and *T. R.* by *J. W.* their Attorney, and the aforeſaid *R. B.* and *A. O.* by Sir *Cyril Wich*, Knight, their Attorney, came here likewiſe at the ſame Day, and thereupon the ſaid *J. J.* the now Plaintiff, prayed, That the aforeſaid *J. H. T. R.* and *A.* might anſwer to the aforeſaid Writ, *&c.* And the aforeſaid *J. H. T. R.* and *A.* ſay, That the aforeſaid *J. J.* the now Plaintiff, ought not to have his Execution aforeſaid againſt them the ſaid *J. H. T. R.* and *A.* for the Debt aforeſaid, by Virtue of the ſaid Recognizance, becauſe they ſay that one *R. J.* long before the Day of ſuing out the aforeſaid Writ, had, and always afterwards hitherto hath been, and now is, a Tenant of one Meſſuage, with the Appurtenances, in the Pariſh of St. *Mary Aldermanbury*, commonly called or known by the Name of the *Axe-Inn*, of which ſaid Meſſuage the aforeſaid *R. T.* deceaſed, named in the aforeſaid Writ, was ſeized in his Demeſne, as of Fee, the aforeſaid Sixteenth Day of *Auguſt*, in the Twelfth Year of the Reign of his preſent Majeſty, and that no Writ of *Sci. fa.* hath iſſued out of this Court, directed to the Sheriffs of *London*, againſt the ſaid *Robert* the ſaid Tertenant: And this they are ready to verify; and inaſmuch as no Writ of *Scire Facias* hath iſſued out of this Court here, directed to the Sheriffs of *London*, they the ſaid *J. H. T. R.* and *A.* pray Judgment, if they ought to be compelled to anſwer to the aforeſaid Writ returned in Form aforeſaid, *and ſo forth*.

Plant at the Suit of **Little** and his Wife.

Mich. 2 *Jac.* 2. *Rot.* 767.

Plea in Abatement, that he is an Adminiſtrator during the Minority of the Infant. 1 Lut. 20.

And the aforeſaid *Anne*, by *C. W.* her Attorney, comes and prays Judgment of the aforeſaid Writ, becauſe ſhe ſaith, that the aforeſaid *Richard*, in the aforeſaid Declaration mentioned the Thirty-firſt Day of *July*, in the Firſt Year of the Reign of our Sovereign Lord the King, that now is, at *Peterborough* aforeſaid, made his laſt Will and Teſtament in Writing, and thereby conſtituted and ordained one *Richard Plant*, Son of the ſaid *Richard*, Executor of the ſame;

and afterwards (*to wit*) the Firſt Day of *October*, in the Firſt Year aforeſaid, died at *Peterborough* aforeſaid; and after the Death of the ſaid *Richard Plant* the Father, and before ſhe adminiſtered any of his Goods and Chattels which were his at the Time of his Death, (*to wit*) the Third of *October*, in the Firſt Year aforeſaid, at *Peterborough* aforeſaid, Adminiſtration of all and ſingular the Goods and Chattels, Rights and Credits of the ſaid *Richard Plant* the Father, at the Time of his Death, by *William* by Divine Providence Archbiſhop of *Canterbury*, Primate and Metropolitan of all *England*, were duly committed to the ſaid *Anne*, with the Teſtament of the ſaid *Richard* annexed; and during the Minority of the ſaid *Richard* the Son, and to his Uſe and Behoof, which *Richard Plant* the Son is yet within the Age of Seventeen Years, and is now actually alive, (*to wit*) at *Peterborough* aforeſaid: *And this ſhe is ready to verify*; wherefore inaſmuch as the ſaid *Archibald* and *Frances* have not ſued out their Writ againſt the ſaid *Anne*, as Adminiſtratrix of the Goods and Chattels which were of the ſaid *Richard Plant* the Father, at the Time of his Death, with the Will of the ſaid *Richard* annexed, during the Minority of the ſaid *Richard* the Son: The ſaid *Anne* prayeth Judgment of the ſaid Writ, and that the ſaid Writ may be quaſh'd: And bringeth here into Court the Letters of Adminiſtration of the ſaid Archbiſhop, granted to the ſaid *Anne* in Form aforeſaid, the Date whereof is the Day and Year aboveſaid.

In the preſent Caſe there was a *Reſpondeas Ouſter* for want of the Words; *And this ſhe is ready to verify, wherefore inaſmuch*, and ſo forth.

Glynne at the Suit of **Bradley.**

Trin. 2 *Jac.* 2. *Rot.* 341.

A Plea that the Plaintiff was excommunicated by Judges Delegates.
1 Lut. 17.
Noy 89.
Keil. 96. a.
Lat. 177.
3 Lev. 334.
1 Lut. 40.

And the ſaid *E. G.* by *J. O.* his Attorney, comes and defends himſelf againſt the Force and Injury, and ſaith, That he the ſame *E. G.* ought not to be compelled to anſwer to the aforeſaid Writ, becauſe he ſaith, That the aforeſaid *J. B.* is, and at the Time of ſuing out the Original Writ aforeſaid was, excommunicated by *William Trumber* and *Charles Parrot*, Doctors of Laws, Judges, then Delegates of the King, lawfully conſtituted (*to wit*) at the Pariſh of St. *Martin in the Fields* aforeſaid; upon which Excommunication his Majeſty's Writ of *Excommunicato Capiendo*, iſſued againſt the ſaid *J. B.* directed to the Sheriff of *Middleſex*; which ſaid Writ followeth in theſe Words; (*Here recite the Writ*:) And this he is ready to verify; wherefore the ſaid *E.* prayeth Judgment of the ſaid Writ iſſued againſt him, together with this, that he the ſaid *Edward* is ready to make it appear, that the ſaid *J. B.* mentioned in the Writ and Declaration aforeſaid: And the ſaid *J. B.* in the *Excommunicato Capiendo* abovenamed are one and the ſame, and not different, Perſons.

There was a Reſpondeas Ouſter *in this Caſe, becauſe no Certificate of the Judges Delegates was produced, nor was it pleaded* ſub pede Sigilli; *and another Fault was, that the Concluſion of the Plea ought to have been, that the Plea ſhould remain without a Day until*, and ſo forth, *that is, until the Plaintiff ſhall have purchaſed his Letters of Abſolution; at which Time he may have a Reattachment upon his Original.*

Tremain

Tremain at the Suit of Frorwiſt, and others, Executors.

Mich. 22 *Car.* 2. *Rot.* 367.

Plea in Abatement, that two of the Executors (Plaintiffs) are within the Age of Seventeen Years.
2 Saund. 209.

And the aforeſaid *J. T.* by *J. B.* his Attorney, comes and defends himſelf againſt the Charge of the Force and Injury, *and ſo forth*, and prayeth Judgment of the Declaration aforeſaid; becauſe he ſaith, That the aforeſaid *J. S.* and *E. S.* two of the Plaintiffs in the Declaration mentioned now are, and each of them is within the Age of Seventeen Years, (*to wit*) each of them of the Age of Thirteen Years, and no more, (*to wit*) at the Pariſh of St. *Clements Danes*, in the County of *Middleſex*: And this he is ready to juſtify; wherefore he prayeth Judgment, and that the aforeſaid Bill may be quaſh'd, *and ſo forth*.

The Earl of Huntington at the Suit of Naers.

Mich. 4 *Jac.* 2. *Rot.* 313.

Plea in Abatement, that there were but 14 Days between the Return of the Teſte, and Return of the Sci. fa.
1 Lut. 25.

And the aforeſaid *Theophilus* and *Robert*, by *Charles Draper* their Attorney, come and pray Judgment of the aforeſaid Writ of *Sci. fa.* becauſe they ſay, That the aforeſaid Writ, iſſued as above, beareth Date at *Weſtminſter* the Twenty-third Day of *October*, in the Fourth Year of the Reign of our Sovereign Lord the now King; which ſaid Writ was returnable, and returned here on the Morrow of *All Souls*, between which ſaid Twenty-third Day of *October*, and the aforeſaid Morrow of *All Souls*, there were only Fourteen Days; and in that Caſe the aforeſaid Writ of the ſaid Date returned here, is not ſufficient in Law to compel the aforeſaid *T.* and *R.* to anſwer to the aforeſaid Plea: And this they are ready to verify by the ſaid Writ returned here at the ſaid Morrow of *All Souls*; wherefore they pray Jndgment of the ſaid Writ, and that the ſame may be quaſh'd, *and ſo forth*.

Surby at the Suit of Gawen.

Paſch. 35 *Car.* 2. *Rot.* 1528.

An Outlawry pleaded in Abatement, ſub pede Sigelli.
1 Lut. 6.

And now at this Day, (*to wit*) on *Friday* next after the Morrow of the *Holy Trinity*, this ſame Term, until which Day the ſaid *Robert* (ſaving to himſelf all and all Manner of Exceptions to the aforeſaid Bill) had Leave to imparl to the ſame Bill, and then to anſwer, *and ſo forth*, before our Lord the King at *Weſtminſter*, came as well the aforeſaid *Carew Gawen*, by his Attorney aforeſaid, as the ſaid *R.* by *Richard Townſon* his Attorney; and the ſame *Robert* defends himſelf againſt the Force and Injury, and ſaith, That he ought not to be compelled to anſwer to the aforeſaid Declaration of the ſaid *Carew Gawen*; becauſe he ſaith, that one *T. Cloborn* formerly, that is to ſay in the Term of St. *Hillary*, in the Thirty-firſt Year of the Reign of his preſent Majeſty, impleaded the aforeſaid *Carew Gawen*, by the Name of *Carew Gawen*, late of *London*, Yeoman, in the Court of Common Bench of our ſaid Sovereign Lord the King, (the ſaid

Court being then at *Weſtminſter*) in the County of *Middleſex*, of a Plea of Treſpaſs and Aſſault; and the aforeſaid *C. G.* inaſmuch as he did not come into his ſaid Majeſty's Court of Common Bench, to anſwer to the ſaid *T. C.* thereof, according to the Laws and Cuſtoms of this Kingdom of *England*, was put in *Exigent* to be outlawed in *London*, and on that Occaſion afterwards, (*to wit*) on *Monday* next after the Feaſt of the Apoſtles St. *Philip* and St. *James*, in the Thirty-ſecond Year of the Reign of our ſaid Sovereign Lord the King that now is, was outlawed at the Suit of the ſaid *Thomas Cloborn*, as by the Records and Proceedings thereof, now remaining in the ſaid Court of Common Bench of our ſaid Sovereign Lord the King more fully may appear: Which ſaid Outlawry remains of Record in its full Force and Effect, not reverſed or annulled; and this he is ready to verify, where, and in what Manner the Court ſhall appoint; and the ſaid *R. S.* brings here into Court the Writ of our ſaid Sovereign Lord the King, of *Capias Utlagatum*, iſſuing out of his ſaid Majeſty's Court of Common Bench, againſt the ſaid *C. G.* under the Seal of our ſaid Sovereign Lord the King, for ſealing his Writs in the ſaid Court of Common Bench, directed to the Sheriff of *Middleſex*, the Tenor of which Writ follows in theſe Words, (to wit) [*here recite the Writ*] whereupon the ſaid *Robert* prays Judgment, if he ought to be compelled to anſwer to the Declaration aforeſaid, (the ſaid *Carew* being outlawed, as above) Together with this, that the ſaid *Robert* is likewiſe ready to verify, that the aforeſaid *C. G.* ſo as above outlawed, and the aforeſaid *C. G.* the now Plaintiff in the Declaration above-mention'd, is one and the ſame, and are not different Perſons.

Note; *It ſeems there was a* Reſpondeas Ouſter *awarded, and that becauſe there was a full Defence by the Words,* comes and defends the Force and Injury, when, *&c. therefore I have here omitted the Words* when, &c. *which denote ſuch full Defence.*

Mich. 36 *Car.* 2. Rot. 301.

Sevill at the Suit of **Watford**.

Plea in Abatement, that the Writ is dated before the Letters of Adminiſtration. Lut. 8.

And the ſaid *Elizabeth*, by *T. Freeman* her Attorney, comes and craves Oyer of the ſaid Original Writ; whereupon the aforeſaid *Robert* hath above declared, and it is read to her in theſe Words, (to wit) [*here recite the Writ*] which being read and heard, ſhe the ſaid *Elizabeth* prays Judgment of the aforeſaid Writ, becauſe ſhe avers, That the ſaid *Daniel*, on the Firſt Day of *February*, in the ſaid Thirty-ſixth Year of the Reign of our ſaid Sovereign Lord the King, died inteſtate at *Chelmsford* aforeſaid; and that on the Twentieth Day of *February*, in the Thirty-ſixth Year aforeſaid, and not before, Sir *Thomas Exton*, Knight, Doctor of Laws, Commiſſary and Sequeſtrator General, lawfully conſtituted, to the Reverend Father in CHRIST, *Henry*, by Divine Permiſſion, Lord Biſhop of *London*, in the Diviſions of *Eſſex* and *Hertfordſhire*, granted Letters of Adminiſtration to the ſaid *Elizabeth*, of all the Goods and Chattels which were of the ſaid *Daniel* at the Time of his Death, to be adminiſtred, (to wit) at *Chelmsford* aforeſaid; and that ſhe the ſaid *Elizabeth*, by Virtue of the Letters of Adminiſtration aforeſaid, is Adminiſtratrix of all the Goods and Chattels which were of the ſaid *Daniel*, at the Time of his Death, and not otherwiſe adminiſtred: And this ſhe is ready to verify; wherefore ſhe prayeth Judgment of the ſaid Writ, and that the ſame may be quaſh'd.

1 Lut. 9.

This Plea upon a Demurrer was held good, notwithſtanding the Objection, that the particular Authority of the Grantor of the Letters of Adminiſtration does not appear any otherwiſe than by the Words, *Commiſſary lawfully conſtituted*; and there was a Difference taken between a peculiar Juriſdiction and a Commiſſary or Chancellor of the Biſhop.

Plea in Abatement, for miſnaming his Name of Baptiſm. Lut. 10. Note; **Since the Act of Parliament for annexing** an Affidavit **to the Plea,** Quære **if it is not proper to leave theſe Words out.**

And now at this Day, (to wit) on *Thurſday* next after the Morrow of the Holy *Trinity*, *William Robins*, who was taken and arreſted by the Sheriff of *Norfolk*, by Virtue of the aforeſaid Writ, by the Name of *Robert Robins*, comes here in his proper Perſon, and defends the Force and Injury, and pleads That he ought not to be charged by Force and Virtue of that Writ, *becauſe he ſaith that he is not, nor can be underſtood to be the ſame Perſon againſt whom the aforeſaid* A. *brought his Writ*; becauſe he avers that he is named and called *William Robins*, and by that Name and Surname hath always from the Time of his Nativity hitherto been named and called, **Without that**, That he is named or called *Robert Robins*, or by that Name and Surname was ever call'd or known, as by the aforeſaid Writ of the ſaid *J. B.* it is above ſuppoſed: And this he is ready to verify; wherefore he prays Judgment of the ſaid Writ, and that he may be acquitted and diſcharged from the ſaid Writ, and may from the Court here be diſmiſſed at large, *&c.*

Lut. 10, 11.

Note, *That in this Plea the Defendant doth not demand Judgment of the Writ in the* Exordium *thereof, but only in the Concluſion; for it is not formal to demand Judgment in the firſt Part of the Plea, if the Matter pleaded is not apparent in the Writ itſelf; and ſo it was held by* Dyer *and* Brown *in* Moor 30.

Plea in Abatement, that the Teſtator was alive at the Time of the Writ purchaſed. Lut. 13.

And the aforeſaid *Grace*, by *R. M.* her Attorney, comes and prays Oyer of the aforeſaid Original Writ of the ſaid *Samuel* and *Sarah*; and it is read to her in theſe Words; *James* the Second, by the Grace of GOD, *&c.* [*here recite the Writ*]; which being read and heard, the ſaid *Grace* prays Judgment of the ſaid Writ, becauſe ſhe avers, that the aforeſaid *George*, her late Husband, after the ſaid Sixth Day of *November*, in the firſt Year aforeſaid, (to wit) on the Thirtieth Day of *November*, in the ſame Year, was alive and in full Health, (to wit) at *Otley* aforeſaid ——: And this ſhe is ready to verify; wherefore ſhe prays Judgment of the ſaid Writ, and that the ſame may be quaſh'd, *&c.*

Lut. 14.

There was a Reſpondeas Ouſter *here for this Fault in the Plea, that as the* Aſſumpſits *in the Declaration are ſuppoſed to be made at* Bradford, *the Defendant ought to have pleaded that the Teſtator was alive there, and not at* Otley, *which is alledged in the Declaration only to be the Place of Commorancy of the Defendant, and by this Means the Defendant would draw the* Venue *of a tranſitory Thing from the* Venue *in the Declaration.*

It is ſaid in this Caſe the Death of the Teſtator ought to have been traverſed, and therefore, after the Words, *at* Bradford *aforeſaid*, inſert thus, *Without that, that the aforeſaid* George, *late Husband of the ſaid* Grace, *died at* Bradford *aforeſaid, in ſuch Manner and Form as the ſaid* (*Plaintiff*) *doth above alledge.*

And the aforeſaid Inhabitants of the ſaid Hundred of *B. W.* Hundred, by *J. M.* their Attorney, come and defend the Force and Injury, and pray Judgment of the Writ aforeſaid, becauſe they plead, That there is, and for ſo long a Time as there is no Remembrance of any Man to the contrary, hath been in the ſaid County of *Glouceſter*, a Hundred call'd the *Seven Hundreds of Cirenceſter*; and that during all that Time, the aforeſaid Hundred in the Declaration aforeſaid, nam'd *Bright Woldesbarrow Hundred*, hath been, and ſtill is the Circuit of the Town and Lands in the County of *Glouceſter*, commonly call'd *B. Hundred*, and Parcel of the ſaid Hundred, call'd the *Seven Hundreds*: **Without that**, that the aforeſaid Hundred in the Declaration aforeſaid ſpecified is, and during the aforeſaid Time hath been a Hundred of itſelf, as the aforeſaid *W.* by his Writ and Declaration aforeſaid above ſuppoſes: And this they are ready to verify; whereupon they pray Judgment of the Writ, and that the ſame may be quaſh'd, *&c.*

Abatement in Hue and Cry, for that the Hundred in the Count is Parcel of another Hundred.

ſſ. *William Pole* of *London*, Smith, who by the Sheriffs of *London* was arreſted by the Name of *William Paul* of *London*, Smith, perſonally appears and pleads, That he at the Time of ſuing out the Original Writ of the ſaid *A.* was, and always afterwards hath been, and now is known and call'd by the Name of *William Pole* of *London*, Smith, **Without that**, That he, at the Time of ſuing out of the ſame Writ was, or at any Time ſince hath, or before had been, or now is known or call'd by the Name of *William Paul* of *London*, Smith, as by the ſame Writ is above ſuppoſed: And this he is ready to verify; wherefore he prayeth Judgment of the Writ, and that the ſame may be quaſh'd, *&c.*

Miſnomer in the Surname.

And the ſaid *A. B.* and *C. D.* by *J. M.* their Attorney, come and defend the Force and Injury, and pray Judgment of the Writ aforeſaid, becauſe they aver that the ſaid *J. K.* on the aforeſaid Fourteenth Day of *Auguſt*, when the Entry aforeſaid is ſuppoſed to be made, had nothing in the Manor aforeſaid, with the Appurtenances, unleſs in Common, and undivided, with one *W. C.* Eſq; which ſaid *W.* is yet alive, and remains in perfect Health, and not nam'd in the Writ aforeſaid: And this they are ready to verify; whereupon they pray Judgment of the ſaid Writ, and that the ſame may be quaſh'd, *&c.*

The Defendants plead in Abatement to the Writ, that the Plaintiff and another Stranger are Tenants in Common, and the other not named in the Writ.

And the ſaid *A. B. C. D.* and *E. F.* by *J. M.* their Attorney, come and defend the Force and Injury, and all Contempts, and whatſoever elſe they ought to defend, and pray Judgment of the Original Writ of the (Plaintiff) aforeſaid, becauſe that the aforeſaid *T. L.* doth by the ſame Writ ſuppoſe, that the aforeſaid *A. B. C. D.* and *E. F.* enter'd into the Manors aforeſaid, with the Appurtenances in *T. N.* *&c.* Whereas the ſaid *A. B. C. D.* and *E. F.* do aver, that within the County of *N.* aforeſaid, there is not, nor

Miſnomer of the Town wherein the Entry and Treſpaſs is ſuppoſed to be pleaded in Abatement.

at the Time of obtaining the aforeſaid Writ was, or ever had there been, any Town, Hamlet, or Place known or called by the Name of *Farthingale*, as by the Writ above is ſuppoſed: And this, &c. (*as in the former*).

Miſnomer of the Addition.

And the aforeſaid *A. B.* in his proper Perſon comes, (or *perſonally appears*) and defends the Force and Injury, and all Contempts, and whatſoever elſe laid to his Charge, that he ought to defend, and pleads, That he is, and at the Time of ſuing out the Original Writ of the ſaid *C.* was of the Society of *Clements-Inn*, in the Pariſh of St. *Clements-Danes*, without the Bars, and a Member of the *Middle Temple*, *London*, which ſaid Society is, and at the Time of ſuing out the ſame Writ was, and long before had been a certain Society of Men expert in the Temporal Laws, and practiſing the ſame: **Without that**, That he the ſaid *A. B.* at the Time of ſuing out the ſame Writ, was *A. B.* of *London*, Mercer, or by that Name known or call'd, as by the ſaid Writ is above ſuppoſed: And this, &c. (*as in the former*).

Infancy.

And the ſaid *R.* by *P. J.* his Attorney, comes and prays Judgment of the ſaid Bill, becauſe he avers, That the ſaid *R.* the now Plaintiff, is within the Age of 21 Years (to wit) of the Age of 18 Years, and no more, at *Weſtminſter* aforeſaid; and that the ſaid *R.* here in this Court hath declar'd in the ſaid Action, by *F. G.* his Attorney; whereas, by the Law of the Land, the ſaid *R.* ought to have declar'd, by his next Friend, (to be admitted by this Court for that Purpoſe): And this he is ready to verify; wherefore, inaſmuch as the ſaid *R.* being within Age, hath in this Court declar'd, in the ſaid Action, by *F. G.* his Attorney, he the ſaid *R.* prays Judgment of the ſaid Bill, and that the ſame may be quaſh'd, *&c.*

A Plea in Abatement after Oyer, that the Plaintiff's Partner is not named in the Writ. Clift 8.

And the ſaid *Cæſar*, by *H. C.* his Attorney, comes and defends the Force and Injury, and craves Oyer of the aforeſaid Bond; and it is read to him in theſe Words; *Know all Men by theſe Preſents, That I* Cæſar Wood, *of* Aſhwood *in the County of* Berks, *Knight, am held and firmly bound to* William Sherrard *and Company, of St.* Bridget, *alias St.* Brides, London, *Mercers, in Forty-ſix Pounds of lawful Money of* Great Britain, *to be paid to the ſaid* William Sherrard *and Company, or their certain Attorney, or their Executors or Adminiſtrators, to which Payment I bind myſelf*, &c. [*and ſo go on with the Bond*]: Which being read and heard, he the ſaid *Cæſar* prays Judgment of the ſaid Writ, becauſe he avers, That *A. B.* and *C. D.* were then Partners with the ſaid *William*, in his Trade of a Mercer, at the Pariſh of St. *Bridget*, alias St. *Brides*, in *London* aforeſaid, and that they are now actually alive: And this he is ready to verify; wherefore, inaſmuch as the ſaid *A. B.* and *C. D.* are not nam'd in the ſaid Declaration, he prays Judgment of the ſaid Writ, and that the ſame may be quaſh'd *&c.*

A Plea in Abatement, becauſe the Plaintiff died before the ſuing out of the Writ. Clift 6.

And the aforeſaid *B.* by *T. K.* his Attorney, comes and defends the Force and Injury, and prays Judgment of the aforeſaid Writ; becauſe he ſaith, that the aforeſaid *William*, after Original Writ aforeſaid, was ſued out, and before this Day, (to wit) on the Firſt Day of *September*, in the Second Year aforeſaid, died at *Dis* aforeſaid: And this he is ready to verify; wherefore he prayeth the Judgment of this Honourable Court of the ſaid Writ, and that the ſaid Writ may be quaſh'd, *and ſo forth*.

That the Plaintiff had nothing unleſs in a joint Capacity. Clift. 7.

And the aforeſaid *D.* by *S. B.* his Attorney, comes and prays the Judgment of this Honourable Court of the Writ aforeſaid, and ſaith, That the aforeſaid (Plaintiff) at the aforeſaid Time, when the aforeſaid Treſpaſs is ſuppoſed to be done, or at any Time afterwards, or before, had nothing in the Cloſes aforeſaid, in which the ſaid Treſpaſs is ſuppoſed to be done, unleſs jointly and for an undivided Part, together with *A. B.* and *C. D.* which ſaid *A. B.* and *C. D.* are now actually alive, (*to wit*) at *Swaffham* aforeſaid: And this he is ready to verify; wherefore inaſmuch as the aforeſaid *A. B.* and *C. D.* are not named in the ſaid Writ, he prayeth the Judgment of this Honourable Court of the ſaid Writ, and that the ſaid Writ may be quaſh'd, *and ſo forth*.

An Excommunication pleaded in Abatement of the Writ after the laſt Continuance.

And the aforeſaid *N.* by *R. W.* his Attorney, comes, *and ſo forth*, and prays an Imparlance until the Morrow of the *Holy Trinity*, and hath it, *and ſo forth*; The ſame Day is given to the aforeſaid *J.* here, *and ſo forth*, at which Day here came, as well the ſaid *J.* as the aforeſaid *N.* by their Attorney as aforeſaid; and hereupon the ſame *J.* prays, that the aforeſaid *N.* may anſwer to his Writ and Declaration aforeſaid, *and ſo forth*; and hereupon the aforeſaid *N.* ſays, That the ſaid *J.* is not entitled to have any Anſwer to his ſaid Writ, becauſe he ſaith, that the aforeſaid *J.* after the laſt Continuance of the Plea aforeſaid, (*to wit*) after the Month of *Eaſter* laſt paſt, (from which Day that Action was continued here until this Day, that is to ſay, in the Morrow of the *Holy Trinity*) and before this Day was, and ſtill is, excommunicated, and he ſheweth forth here in Court the Letters Patents of the Reverend Father in God, *John*, by Divine Providence, Biſhop of *Briſtol*, which teſtify the ſame in theſe Words, *John* by the Permiſſion, *and ſo forth, and recite all the Letters of Excommunication verbatim*, and wherefore he prays that the Action aforeſaid may remain thereof without Day until, *and ſo forth*.

For a Meſſenger of the Exchequer by his Privilege between Nolb and Jennor.

And the aforeſaid *A. B.* in his proper Perſon, comes and ſays, That as well by the Royal Prerogative, as by an antient Cuſtom, according to the ſame, Time out of Mind uſed, Perſons ſitting in the Exchequer of our Sovereign Lord the King, their Miniſters and Servants there attending the Accounts and Buſineſſes of our ſaid Sovereign Lord the King, ſhould not be drawn into Plea otherwiſe than in the Exchequer aforeſaid, as long as the ſaid Exchequer ſhould be open; and ſaith that he is, and from the Day of the obtaining of the Original Writ of the ſaid *G.* and *A.* was a Servant, and one of the Meſſengers attending on the Right Honourable Sir *Robert Walpole*, Knight of the moſt Noble Order of the Garter, Chancellor and Under-Treaſurer of his ſaid Majeſty's Court of Exchequer at *Weſtminſter*; and this he is ready to verify; wherefore he prayeth Judgment of, *and ſo forth*.

Squib at the Suit of Wentworth.

Paſch. 13 *W.* 3. *the Imparlance Rot. Hill.* 12. *Rot.* 677.

A Plea in Abatement by Privilege of the Exchequer. Lut. 44.

And the aforeſaid *A.* in his proper Perſon, (ſaving to himſelf all and all Manner of Exceptions and Advantages, as well to the Juriſdiction of the Court, as to the Writ and Declaration aforeſaid) prays Leave to imparl thereto till from the Day of *Eaſter* in Fifteen Days; and he hath it granted, *and ſo forth*; the ſame Day is given to the aforeſaid *H.* here, *and ſo forth*, at which Day comes as well the aforeſaid *H.* by his Attorney, as the aforeſaid *A.* in his proper Perſon; and the ſame *A.* ſaith, that as well by the Royal Prerogative, as by the antient Cuſtom concerning the ſame, uſed and approved of in the King's Exchequer, Time out of Mind, Perſons reſiding in the Exchequer of our Sovereign Lord the King, and their Officers and Servants attending the Accounts and Buſineſs of our ſaid Sovereign Lord the King, ſhould not be drawn into Plea elſewhere than in the ſaid Court of Exchequer, ſo long as the ſame ſhould be open; and the ſame *Arnold* further ſaith, that at the Day of iſſuing of the aforeſaid Original Writ of the ſaid *H.* he was, and always afterwards hitherto hath been, and now is, a Clerk of the *Nichils* of the ſaid King's Exchequer, at *Weſtminſter* in the County of *Middleſex*, (the ſame being then and now open) and that the ſame *Arnold*, by reaſon of his Office, was then Reſident, and is now perſonally attending thereon; and this he is ready to verify, and bringeth here into Court a Writ unopened of our ſaid Sovereign Lord the King, iſſuing out, and under the Seal of the ſaid Court of Exchequer, in theſe Words: *George* the Second, *and ſo forth*; To all whom theſe Preſents ſhall come, Greeting: Whereas, as well by our Royal Prerogative, as by an antient Cuſtom concerning the ſame, uſed and approved of Time out of Mind, (*here recite the Writ*) which ſaid Writ being read and heard, the ſame *Arnold* doth not apprehend that this Honourable Court will take any further Cognizance of, or hold the aforeſaid Plea againſt him, *and ſo forth*.

Shore at the Suit of Dobson.

Upon which the ſaid *L. D.* (ſaving to himſelf all and all manner of Advantages, Exceptions, and Allegations to the Plea aforeſaid of the ſaid *J. S. S. A.* and others) prays Leave to imparle before our Sovereign Lord the King, at *Weſtminſter*, until *Wedneſday* next after Fifteen Days of St. *Hillary*, and the ſame is granted to him accordingly. The ſame Day is given to the Parties aforeſaid there, *and ſo forth*, at which Day, before our ſaid Sovereign Lord the King, at *Weſtminſter*, comes as well the aforeſaid *J. D.* as the aforeſaid *J. S.* by their ſaid Attornies; upon which the aforeſaid *J. D.* excepting to himſelf as aforeſaid, prays further Leave to imparle thereto, before our ſaid Sovereign Lord the King, at *Weſtminſter*, until *Wedneſday* next after the Morrow of the Purification of the Bleſſed Virgin *Mary*, and he hath, as it was before, it granted to him, *and ſo forth*. The ſame Day is given to the Parties aforeſaid there, *and ſo forth*, at which Day, before our Sovereign Lord the King, at *Weſtminſter*, comes as well the aforeſaid *J. D.* as the aforeſaid *J. S.* by their ſaid Attornies. And the ſame *J. D.* ſaith, that after the laſt Continuance of the aforeſaid Plea (*to wit*) after the ſaid *Wedneſday* next after the Morrow of the Purification of the Bleſſed Virgin *Mary*, (*to wit*) the Tenth of *February*, One Thouſand Six Hundred and Eighty-nine, the aforeſaid *D.* was, and now is abſolved and diſcharged from the aforeſaid Sentence of Excommunication, and reſtored to the Communion of *Chriſt* and the Sacraments of the Church. And the ſame *J. D.* bringeth here into Court the Letters Patents of *George Oxenden*, Doctor of Laws, Principal Official to the Gracious Court of *Canterbury*, lawfully conſtituted, teſtifying ſuch Abſolution; which ſaid Letters Patents follow in theſe Words, (*to wit*) *and here recite the Letters Patents.*

Replication by Way of Eſtoppel to a Tender after Imparlance, Clift. 19.

And the aforeſaid *H.* ſaith, That the ſaid *Thomas* ought not to be admitted to plead his ſaid Plea of Tender in the Manner and Form above, becauſe he ſaith, That the ſame *Henry* lately (*to wit*) in *Eaſter Term* laſt paſt, declared here in this Court of the aforeſaid Plea, in Manner and Form aforeſaid. And the aforeſaid *T.* by the aforeſaid *W. S.* his ſaid Attorney, then came and defended himſelf againſt the Force and Injury charged upon him, when, *and ſo forth*, and at the ſame Time pray'd Leave to Imparle thereto until this Day, (*to wit*) on the Morrow of the Holy Trinity, and ſuch Leave he had accordingly, *and ſo forth.* The ſame Day was given to the ſame *Henry* here, *and ſo forth*, as by the Record and Proceedings now remaining here in this Court of Record may appear; and this he is ready to verify, wherefore he prays Judgment, if the ſaid *Thomas* ought to be admitted to plead his ſaid Plea of Tender in the Manner as above, *and ſo forth.*

An Outlawry pleaded in Abatement upon Exigent only, without an Original and other Proceſs. 5 Mod. 144. **When to plead in Abatement of the Declaration.** 2 Show. 443, 444.

And the aforeſaid *William*, by *Samuel Allen*, his Attorney, comes and ſays, That the aforeſaid *Ralph* is not entitled to an Anſwer to his Declaration aforeſaid, becauſe he ſaith, That at another Time, (*to wit*) the Twelfth Day of *February*, in the Sixth Year of the Reign of the Sovereign Lord the King, that now is, before the then Juſtices of his ſaid preſent Majeſty here, that is to ſay, at *Weſtminſter*, in the County of *Middleſex*, came one *H. S.* by the Name of *H. S.* (*of ſuch a Place*) and by due Proceſs of Law obtained and proſecuted his Majeſty's Writ of *Exigent*, againſt the aforeſaid *Ralph*, directed to the then Sheriffs of *London*; which ſaid Writ commands the ſame then Sheriffs of *London*, that they ſhould cauſe to be call'd the aforeſaid *Ralph*, by the Name of *Ralph*, late of *Chelmsford*, *and ſo forth*, otherwiſe call'd *W. H. and ſo forth*, from Huſting to Huſting, until he ſhould be outlaw'd, according to the Law and Cuſtom of this Kingdom of *Great Britain*, if he had not appear'd; and if he had appeared, that then they ſhould take him, and cauſe him to be ſafely kept, ſo that they might have his Body before His ſaid Majeſty's Juſtices at *Weſtminſter* aforeſaid, on the Morrow of the Holy Trinity, to anſwer to the aforeſaid *H. S.* of a Plea, that he ſhould render to him Sixty Pounds, which he then owed to him, and unjuſtly detained, as it was aſſerted by the ſaid *H. S.* the ſaid Sheriff certified to his ſaid Majeſty's Juſtices at *Weſtminſter* aforeſaid, in Eight Days of the Purification of the Bleſſed Virgin *Mary* then laſt paſt, That the ſaid *Ralph* was not to be found in their Bailiwick; foraſmuch as the ſaid Sheriffs had certified, by Virtue of the ſaid Writ, the aforeſaid Sheriffs, namely, *S. R.* Eſq; and *John Pindar*, Eſq; at the aforeſaid Morrow of the Holy Trinity, did return to His ſaid Majeſty's Juſtices at *Weſtminſter* aforeſaid; That at the aforeſaid Huſtings, held at *Guildhall* of the City of *London*, (*ſuch a Day and Year*) the aforeſaid *Ralph* was the Fifth Time call'd, and did not appear; and at Four Huſtings laſt preceding, the ſame *W.* had likewiſe been call'd, and had not appeared; and becauſe at none of the ſame Huſtings he did appear, therefore he the aforeſaid *Ralph* (*ſuch a Day and Year aboveſaid*) was outlaw'd. And the ſame *William* ſaith, that the aforeſaid *R.* is ſtill ſo outlaw'd, and that the ſame Outlawry now remaineth in its Force and Effect, not reverſed or annull'd: And this he is ready to verify by the Record; and therefore he prays the Judgment of this Honourable Court, whether the ſaid *R.* for the Reaſons above, is entitled to have any Anſwer from the ſaid *W. and ſo forth.*

Abatement, for that the Defendant is a Baronet, and not a Knight and Baronet. 5 Mod. 302.

And the ſaid *J. B.* by *J. L.* his Attorney, comes and defends himſelf againſt the Charge of the ſaid Force and Injury, and prays Judgment of the aforeſaid Writ, becauſe he ſaith, That he the ſaid *John*, at the Time of the ſuing out of the ſaid Original Writ, was, and ever ſince hath been, and now is a Baronet only, and not a Knight and Baronet, as the ſaid *B.* above by his Writ ſuppoſeth, **Without that**, That the ſaid *J.* now is, or at the Day of the ſuing out the Original Writ of the ſaid *B.* was, or at any Time ſince hath been a Knight and Baronet, as by the ſaid Writ above is ſuppoſed: And this the ſaid *J.* is ready to verify; wherefore he prays Judgment of the ſaid Writ, and that the ſame may be quaſh'd, *and ſo forth.*

Fuller at the Suit of Dovee.

A Plea of a Writ of Error pending in the Exchequer Chamber, pleaded in Abatement to a Sci. fa. Lilly 11.

And the aforeſaid *James Fuller*, by *J. S.* his Attorney, comes and prays Judgment of the aforeſaid Bill of *Robert Dovee*, becauſe he ſays, that after the giving the Judgment aforeſaid, in the aforeſaid Declaration ſpecified, and before the Exhibiting the Bill of the aforeſaid *R. D.* (*to wit*) the Twenty-ninth of *October*, in the Seventh Year of the Reign of his preſent Majeſty, the ſaid *J. F.* in order to reverſe the Judgment aforeſaid, proſecuted out of his preſent Majeſty's High Court of Chancery, (that Court being then at *Weſtminſter*) his Majeſty's Writ for correcting Errors in the Record and Proceedings, and alſo in giving the Judgment aforeſaid, directed to his ſaid Majeſty's Faithful and Well-beloved Sir *John Holt*, Knight, then and now his Majeſty's Chief Juſtice, aſſigned to hold Pleas before the ſaid King himſelf; by which ſaid Writ our ſaid Sovereign Lord the King commanded his ſaid Chief Juſtice, that if Judgment ſhould then be given therein, he ſhould cauſe the Record and Proceedings of the Plaint aforeſaid, together with all Things touching the ſame, to be removed before his Juſtices of the Common Bench, and his Barons of the Exchequer, of the Degree of the Coif, into his ſaid Majeſty's Exchequer Chamber at *Weſtminſter*, on *Wedneſday* the Twenty-ſeventh Day of *November*, that the ſaid Juſtices of the Common Bench, and Barons might view and examine the Record and Proceedings aforeſaid, and might further do what was to be done in that Caſe, and what of Right, according to the Form of the Statute in that Caſe made and provided, ought to be done; by Virtue of which ſaid Writ of Error the ſame Chief

Juſtice afterwards (*that is to ſay*) on the ſaid Twenty-ſeventh Day of *November*, tranſmitted the Record and Proceeding of the Plaint and Judgment aforeſaid, together with all Things touching the ſame, before his ſaid Majeſty's Juſtices of the Common Bench, and Barons of the Exchequer, of the Degree of the Coif, in the ſaid Exchequer Chamber at *Weſtminſter* aforeſaid; and the Record and Proceedings of the Judgment aforeſaid are there yet remaining, and the aforeſaid Writ of Error is yet depending undetermined in the ſaid Court of Exchequer Chamber at *Weſtminſter* aforeſaid, and the Judgment is neither affirmed or reverſed, as by the Record thereof now remaining in the ſaid Court of Exchequer Chamber at *Weſtminſter* aforeſaid, before his ſaid Majeſty's Juſtices of Common Bench, and Barons aforeſaid, may more fully appear: And this the ſaid *John Fuller* is ready to verify, by the Record of the ſaid Judgment and Proceedings; wherefore he prays Judgment of the aforeſaid Bill; and that the ſame may be quaſh'd.

Edward Northey.
John Brodrick.

Readings and Obſervations, with an Abridgment of the Caſes in the Reports.

THE Meaning of this Word *Abatement*, when it relates to Writs, is the Quaſhing of the Plaintiff's Writs from the *French* Word *Abater*, to deſtroy or proſtrate; ſo that by the Matter of the Plea, the Defendant ſhews to the Court, that the Plaintiff ought not to proceed on that Writ, but ought to entitle himſelf in a better Manner before he can maintain his Complaint againſt the Defendant.

And under this Signification, it is an *Exception* alledg'd and made good in Law, and is as much as *Exceptio dilatoria*, with the Civilians. *Britton, cap.* 51.

And as it is a *Dilatory Plea*, and *in Dilatione Celeris Juſtitiæ*, it is therefore not much favour'd in Law, and is generally not to be receiv'd after a General Imparlance. But if the Defendant prays a Special Imparlance, and takes Care to enter it in Time, by which he ſaves to himſelf all Advantages, as well to the Writ, as to the Declaration, the Defendant may then plead within the Time; for his Pleading by the Plaintiff's Rule, which without ſuch Special Imparlance, he could not have done after four Days from the Return of the Writ, and theſe four Days are allowed *ex gratia Curiæ*, for the Defendant to plead to the Writ.

And by the Statute of 4 and 5 of Queen *Anne*, *cap.* 8. the Defendant ſhall not plead a Matter of Fact in Abatement, without an Affidavit of the Truth of the Plea, by which it may appear to the Court, that the Contents of the Plea are true.

But if he pleads Matter of Record, he need not verify the Truth of the Plea by Affidavit. *Modern Caſes* 43.

And having ſaid thus much of Abatement in General, the Caſes in the Books are diſtributed in the following Manner.

First, **What may be pleaded in Abatement.**
Secondly, **Of the Time and Manner of Pleading in Abatement.**
Thirdly, **Of the Judgment in Abatement.**

First, What may be pleaded in Abatement.

1. The Defendant may plead to the Juriſdiction of the Court, ſubmitting thereto, whether they have Conuzance of the Matter in Queſtion.

2. By Diſability of the Plaintiff, whereby he is not capable of maintaining his Writ againſt the Defendant. 3. By Death, or ſomewhat happening pending the Writ. 4. By miſnaming the Defendant, either in his Name, Addition, or Habitation. 5. By Variance between the Writ and the Count, or ſome Deed ſet forth, or ſome Uncertainty or other Defect of due Form. 6. By the Defendant's being under the Protection of the Law, as by being an Infant, Feme Covert, *&c.* 7. By the Plaintiff's miſconceiving his Action, or aſſerting a material Allegation that is falſe, ſo that it appears of his own ſhewing, that he ought not to maintain his Writ in that Manner. 8. By having brought another Action for the ſame Cauſe.

Of Pleading to the Juriſdiction of the Court.

1. In Pleading to the Juriſdiction of the Court, the Defendant muſt not commence his Plea, as if he was pleading in Bar, with the Words *cometh and defendeth the Force and Injury when*, &c. for the Words *when*, &c. ſignify when and where the Court will conſider thereof, which is in Affirmance of the Juriſdiction of that Court. 2 *Show.* 443.

2. It is very certain, that in all Pleas in Abatement, it is better to ſay *that the Defendant comes and pleads*, &c. or that *he comes and defends the Force and Injury*, and pleads, *&c.* but the Latter ſeems the better, according to *Co.* 1. *Inſt.* 127. who there tells us, that it is neceſſary for the Defendant to plead that he comes and defends the Force and Injury, to make himſelf a Party to the Suit. So in *Lut.* 9. it is there ſaid to that Purpoſe.

3. The Plea of Privilege is a Plea to the Juriſdiction of the Court, tho' it doth not ariſe from the Matter in Variance, not being within the Juriſdiction of the Court, but it ſubmits to the Court, whether they ought to take Conuzance of the Action, or proceed againſt the Defendant in that Court, by reaſon of his being a Perſon privileged by another Court, where he ought properly to be ſued.

4. As an Attorney of the Court of Common Pleas ought not to be ſued elſewhere but in the Court of Common Pleas, unleſs the Plaintiff in the Action in the King's Bench is likewiſe an Attorney; for if ſo the Privilege of the Plaintiff of ſuing in the Court of King's Bench ſhall wave and render of no Effect the Defendant's Privilege, and ſo *vice verſa.*

5. Nor ſhall an Attorney have his Privilege where he is neceſſarily join'd with another. 1 *Ven.* 299. *Salk.* 544. *Comb.* 465.

6. Nor where he is charg'd, or ſues as Executor or Adminiſtrator, ſhall he have Privilege. *Hob.* 177. *Salk.* 2. *Newton* v. *Rowland.* Nor where he is Bail. 1 *Keb.* 735.

7. And if an Action be brought in the King's Bench againſt an Attorney of the Common Pleas, it is not enough for him to ſay *that he is an Attorney*; for his being an Attorney does not abate the Plaintiff's Bill, when once the Action is attach'd in the King's Bench; but he muſt ſhew that he was an Attorney at the Time of the Plaintiff's Exhibiting the Bill; for then it will appear to the Court the Plaintiff might have ſued the Defendant there as a privileg'd Perſon. 1 *Salk.* 1. *Peaſe* v. *Parſons.*

8. It is ſaid by *Holt* in the Caſe of *Duncombe* v. *Church*, *Comb.* 390. that if a Perſon, who hath a Privilege of being ſued in another Court, be in actual Cuſtody of the Marſhal, he cannot plead his Privilege; but otherwiſe where he is bail'd, and ſo only ſuppoſed *in Cuſtodia Mareſcalli.* 1 *Salk.* 1. *Jones* v. *Bodinner*, the ſame Point.

9. The Court of King's Bench will take Notice of the Privilege of their own Officers; as where a *Filazer* of the King's Bench was arreſted by a Writ, he was diſcharg'd on common Bail. *Brown*'s Caſe *Salk.* 544.

10. But where an Attorney of the Common Pleas was ſued by a Bill in the King's Bench; upon a Motion for his being diſcharg'd, the Court, *abſente Holt*, denied it, and put him to plead his Privilege.

11. No Plea to the Juriſdiction can be pleaded after an Imparlance. *Comb.* 253. *Denham* v. *Plumpton*, in the Common Pleas.

12. Where a Plea of Privilege of the Cinque Ports was not allow'd to an Action of Debt upon a Bond. *Godb.* 90. *Pl.* 102.

13. Where a Plea of Privilege was not allowed, the Action being brought againſt the Defendant and his Wiſe as Executrix. *Godb.* 10. *Poole's* Caſe.

14. Where a Plea of Privilege of the Univerſity of *Oxford* was held ill. 1 *Brow.* 74. *Carol.* v. *Park.*

15. Where a Plea of Privilege of Parliament was held ill. 1 *Bro.* 91. *Jackſon* v. *Captain.*

16. It was held by the Court, that a *Foreign Attachment* cannot be regularly made upon a Debt before it be due, and therefore to plead, that whereas one was indebted in a Sum of Money to be paid at *Michaelmas*, and it was attached before *Michaelmas*, tho' the Judgment was not till afterwards, yet it was held to be void, becauſe it was not due when attach'd. *Cro. Eliz.* 184. *Dalton* v. *Selly.*

17. Where an Attachment in *London* pleaded to an Action of Debt upon a *Mutuatus*, was not well pleaded. *Moor* 570.

18. After an Action of Debt was brought, the Plaintiff attach'd in *London* the Debt due to the Defendant by another, and had a Judgment to recover; it was adjudg'd, that this Matter might be pleaded in Bar to the Action as to ſo much of the Money. *Moor* 598. *May* v. *Middleton.*

Of Pleading in Diſability of the Plaintiff.

1. A Writ does not totally abate for *Outlawry* or *Excommunication*, but it is only a Temporary perſonal Diſability, and the Judgment is, That the Defendant *remaneat quouſque.* 1 *Inſt.* 128.

2. This Plea likewiſe cannot be pleaded after an *Imparlance.* 1 *Lut.* 19.

3. *Outlawry* muſt never be pleaded with a full Defence. *Show.* 445.

4. Several *Outlawries* pleaded in *Abatement* is naught, for Duplicity is ill in *Abatement*, as well as in *Bar.* 2 *Show.* 80.

5. How to plead that the Party is an *Alien.* 1 *Inſt.* 129. *a. Mod. Rep.* 85, 405.

6. Where the Defendant pleads that the Plaintiff is an *Alien* in Abatement of the Writ, 'tis triable where the Writ is brought, and the *Replication* muſt conclude to the Country; but otherwiſe it is ſaid where it is pleaded in *Bar*, that the Plaintiff is an *Alien*, the *Replication* muſt conclude with an *Averment.* *Salk.* 2. *Weſt* v. *Sutton*, *Comb.* 394. *Texell* v. *Hooper*, *econtra.* Where the Defendant pleaded that the Plaintiff was an *Alien*, born at *Roan* in the Kingdom of *France*, within the Ligeance of the King of *France*; the Plaintiff replies, that he is an *Alien Friend*, born at *Hamborough* within the Ligeance of the Emperor, and traverſeth that he was born at *Roan.* *Holt* inclined it was an ill Traverſe, and puts an ill Iſſue. *Comb.* 212.

7. Of pleading Recuſancy in Diſability, *vide* the Caſe of *Colvin* v. *Fletcher*, *Modern Caſes in Law and Equity*, 1 *Part*, 43.

8. To an *Aſſumpſit* for Monies had and received, the Defendant pleaded in Abatement an *Attainder*, and the Plaintiff replied a Pardon, and concluded in Bar *petit judicium & dampna*; it was held a Diſcontinuance. *Show.* 155.

9. That the Plaintiff is a *Jew* is no Diſability, ſo long as the King permits them to trade. *Mich.* 36 *Car.* 2. *B. R.*

10. A Perſon cannot plead in Diſability of himſelf, that he is *attainted* of Treaſon. 1 *Leon.* 466.

11. Matter of Diſability that was pleadable to the Action, ſhall not be pleaded to the *Scire facias* on the Judgment. *Salk.* 2.

12. Where two Executors ſue, and one only proves the Will, that is not a Matter pleadable in Abatement. *Salk.* 3. *Brookes* v. *Stroud.*

Abatement by Death.

Where Actions are brought by the Mayor and Commonalty, they are abated by the Death of the Mayor. *Salk.* 398.

1. An Action of Debt is brought againſt two, one of the Plaintiffs dies before Verdict, the Action is abated; but it is proper to plead it *puis darrein continuance*, tho' it may be aſſign'd upon a Writ of Error as a Matter of Fact. *Comb.* 169. *Dove* v. *Martin.*

2. By the Death of one of the Plaintiffs in Error the Writ abates. *Comb.* 441. *Pennoyer* v. *Brace*; but it ought to be ſuggeſted upon the Roll before Execution. *Comb.* 442.

3. Even at Common Law, before the Act of 8 and 9 of King *W.* 3. *cap.* 10. *ſect.* 7. where two Jointenants were Defendants, and one died, it did not abate the Writ. 3 *Mod.* 249. *Cro. Jac.* 19.

4. But otherwiſe where they were Plaintiffs. *Ibm.*

5. Nor would the Death of the Husband, where Husband and Wife were proſecuted for Words ſpoken by the Wife, *&c.* abate the Writ or Action at Common Law. *Hard.* 151.

6. Nor would the Writ in Replevin againſt two abate, where one died after the Iſſue join'd. *Cro. Eliz.* 451, 574.

7. But in an Action founded on a Contract brought againſt two, and one died, the Writ abated (tho' they were Executors); but in an Action of Treſpaſs (ſays the Book) grounded upon a Tort, there if one died, the Writ did not abate. *Raym.* 131, 463.

8. So in *Yelv.* 208, 209. It is ſaid, that in Treſpaſs, where one of the Defendants died, pending the Writ, it abated not, for the Treſpaſs is in it ſelf ſeveral, and *non cul.* is their ſeveral Pleas. But if Judgment be had againſt them, and they brought a Writ of Error, and one died, it abated, the Judgment has made that joint which was ſeparate before.

9. By the Act of 8 and 9 of K. *W.* it is enacted, "That if there be
" two or more Plaintiffs or Defendants, and one or more ſhall die, if the
" Cauſe of ſuch Action ſhall ſurvive to the ſurviving Plaintiff or Plaintiffs,
" or againſt the ſurviving Defendant or Defendants, the Writ or Action
" ſhall not be thereby abated; but ſuch Death being ſuggeſted upon the
" Roll, the Action ſhall proceed at the Suit of ſuch ſurviving Plaintiff
" or Plaintiffs, againſt ſuch ſurviving Defendant or Defendants".

10. Before this Statute, where there was a Verdict in Ejectment againſt Husband and Wife, and the Husband died before the Day in Bank, yet Judgment might be had againſt the Wife; but if the Wife died the Writ abated. *Yelv.* 208.

11. So that before the Statute of 17 *Car.* 2. *cap.* 8. where the Party died after the Verdict, and before the Judgment, the Action abated; but by that Statute the Death of the Party after the Verdict, and before Judgment, was aided. *Cro. Car.* 509.

12. And this Conſtruction hath been put upon that Statute, that if the Defendant died after the Commiſſion-Day of the Aſſizes, and was dead, even while the Cauſe was trying; yet the Plea *puis darein Continuance* that the Plaintiff died, ought not to be received; and the Reaſon thereof ſeems to be, becauſe the Party had no Time to plead it; for as the Act of 17 *Car.* 2. aided the Death of the Party after the Verdict, and before Judgment; therefore inaſmuch as the Cauſe, tho' tried after the Commiſſion-Day is ſuppoſed to be tried on that Day, and the *Poſtea* returns it ſo to be, it would be contrary to the very Record, to ſay that the Party died before the Verdict, when the Verdict appears by the *Poſtea* to be before the Death. *Salk.* 6. And this Point was likewiſe lately determined in the Cauſe of *Keeble* v. *Hill* and others, tried before Mr. Juſtice *Denton*, at the *Lent* Aſſizes in *Suffolk*, *Anno* 120. *Geo.* 1*mi.*

13. If an Action of Debt be brought againſt two Sheriffs for an Eſcape, the Death of the one does not abate the Writ. *Hard.* 115.

By the Plaintiff's miſconceiving his Action, or by making a falſe Allegation.

1. And here 'tis Neceſſary to be known, that where a Man demands *two Things*, and it appears by his own ſhewing, that he hath no Action but for *one*, the Writ ſhall not abate in the *Whole*, but ſhall ſtand for that which is good; but where it appears, that tho' he can't have this Writ which he hath brought for *Part*, but may have another, the Writ ſhall abate in the *Whole*. 11 *Rep.* 45. 2 *Rolls* 105. 1 *Saund.* 285.

2. As if an Executor brings an Action againſt another, upon the Statute of *Ed.* 3. for breaking the Plaintiff's Cloſe, and for Money *aſportatis in vita Teſtatoris*, there inaſmuch as it plainly appears he can have no Action for the Breaking the Cloſe; (it being *actio perſonalis & moritur cum perſona*) the Writ ſhall abate only for that Part, and ſtand good for the Remainder. 11 *H.* 4. 6. 11 *Co.* 45. *b.* 1 *Roll's Rep.* 11.

3. Where Huſband and Wife brought an Action of Treſpaſs and Aſſault, for the Battery of the Wife, the Defendant pleaded a *Licence for entring into the Cloſe* from the Huſband, and *Not guilty*; as to the Battery, the Chief Juſtice, and *Doderidge* were of Opinion, that the Plaintiff ſhould have Judgment, but *Haughton* and *Chamberlain contra*; for that the Wife had no Cauſe of Action for breaking the Cloſe of the Huſband; but this Caſe being debated in *Serjeant's-Inn* in *Chancery-Lane*, the Lord Chief Baron was of Opinion, that the Plaintiff ſhould have Judgment for that Part that was good, and that the Writ ſhould abate as to the Reſt; as in 9 *E.* 4. *Pl.* 51. where Treſpaſs was brought by Huſband and Wife for the Battery of them both; the Jury found Damages ſeverally, and it was there held, that becauſe the Wife could not join with the Huſband in an Action for the Battery of the Huſband, for that Part the Writ ſhall abate, and for the Battery of the Wife it ſhall ſtand. *Cro. Jac.* 655.

4. So in *Detinue* of a Box ſeal'd with Charters and Writings concerning the Title of Lands; and the Plaintiff ſhews in his Count a Title to three of the Deeds and Writings, that they concern his Inheritance of Land, of which the Plaintiff and his Wife were *jointly ſeiſed*, for which he *alone* could not have another Action without joining his Wife; there the Writ ſhall ſtand good for the three, and abate for the fourth. 11 *Co.* 45. *b.* 9 *H.* 6. 54 *a.* 16 *H.* 7. 5.

5. So where a Man brought a *Formedon* of Land, and an Advowſon, and it appear'd that the *Formedon* did not lie for the Advowſon, it ſhall ſtand good for the Land. 11 *Co.* 45. *b.* 9 *H.* 7. 4. *a.* 16 *H.* 7. 5. 37 *H.* 6. 25. *b.*

6. So if a Man *avows* of the taking a Diſtreſs for diverſe Rents in Arrear, and it appears of his own ſhewing, that Part of the Rents are not due, yet the Avowry is good for the Remainder, and ſhall not abate in the Whole. *Kiel.* 31. *b.* 11 *Co.* 45. *b.*

7. So if a Man *avows* for *Rent*, and a *Nomine pœnæ*, and it appears that he hath no Cauſe to avow for one of them, the Avowry ſhall abate only as to that Part for which he had no Cauſe to avow, and ſhall ſtand good as to the Reſt. 2 *Roll's Abr.* 434.

8. But 'tis to be obſerved, that where a Man avows, and the Plaintiff and Defendant differ as to the *Quantum* of the Rent, and it appears that the Party hath not entitled himſelf to ſuch a Rent, but to a leſs Rent, there the Avowant ſhall not have a Return for any Thing. *Moo.* 281. 1 *Brownl.* 186.

9. Where the Avowry is for a Rent-ſervice due at ſeveral times, and it is one entire taking of Cattle, and it appears by the Avowry, that one of the Days is not yet come, the whole Avowry ſhall abate; but if the Avowry be of taking ſeveral Parcels of Cattle for Rent due at one Time, and for taking other Cattle for Rent due at another Day, and it appears that one of the Days is not yet come, the Avowry ſhall not abate in the Whole, but only for that Part that the Rent appears not to be yet in Arrear. 2 *Roll's Abr.* 434.

10. So if an Action of Debt be brought upon ſeveral Bonds, where ſome are due, and ſome not, the Plaintiff ſhall recover for thoſe that are due. *5 Mod.* 215.

11. But if a Man demands a Debt of 20 *l.* and confeſſes upon the Pleadings, that he hath no Right to 10 *l.* of it, the Court *ex Officio*, or the Party, Defendant, or any other, as an *Amicus Curiæ*, may abate the Writ. *Hob.* 279.

12. So in Debt for Rent at ſeveral Times, and the Plaintiff declares for more than is in Arrear, yet the Plaintiff might well releaſe the *Surplus*, and take his Judgment for the Reſt. *5 Mod.* 214.

13. If the Plaintiff doth in any Action diſcover to the Court any Thing whereby it appears to the Court that he had no Cauſe when he began his Suit, his Writ ſhall abate.

14. As if it appears that Adminiſtration was granted after the Action brought, the Writ abates. *Hob.* 245. *Bickford* v. *Bickford.*

15. So where the Plaintiff brought a *Quare Impedit* againſt the Archbiſhop of *York*, and *A. C.* for diſturbing him in the Preſentation to the Church of *L.* and the Biſhop pleads, that *J. S.* the Incumbent died the 10th Day of *January*, in the 12th Year of the King; and that the Church remained Vacant, and he preſented *J. S.* for Lapſe, and claim'd nothing but as Ordinary; and the Incumbent pleads and confeſſes the Plaintiff's Title, but pleads the Collation of him by the Biſhop; the Plaintiff by his Replication ſhews, that after the Death of *J. S.* and before 1ſt Day of *January*, in the ſaid 12th Year, (*to wit*) the 29th Day of *May*, 1615. he preſented *J. D.* to the Church, and the Biſhop refuſed him; and that afterwards the Biſhop (*viz.*) the 23d Day of *December*, collated *A. C.* to the Church; now upon his own ſhewing, the Plaintiff abates his Writ, becauſe the Action was brought before the Cauſe of Action, which aroſe from the Collation, and there could be no Diſturbance before the Action brought. *Hob.* 197, 198.

16. *J. S.* the Defendant covenanted with *J. D.* the Plaintiff, that *J. S.* would pay the Plaintiff, within three Months after Requeſt, all ſuch Sums of Money as the Defendant's Son, being the Plaintiff's Apprentice ſhould imbezil from him; the Son does imbezil, *&c.* But on the Trial it appear'd, that the three Months were not lapſed after the Requeſt, before the Action brought, and the Writ abated. *Hob.* 217.

17. Where a Man has a Right to an Action, and the ſame is well begun, and Part of the Demand is determin'd by Act in Law, and the like Action may be had for the Reſidue, there the Writ ſhall not abate; but where by Determination of Part, the like Action will not lie for the Reſidue, there the Writ ſhall abate. *As for Example*; If an Action of Waſte be brought againſt the Tenant for the Life of another, and pending the Writ the Life drops, the Writ ſhall not abate, but the Plaintiff ſhall recover Damages only; becauſe, if the Life had dropt before the Action brought, the Leſſor might have an Action of Waſte for the Damages. *Co. Lit.* 285. *a.*

18. So if an *Ejectment* had been brought, and the Term had incurr'd pending the Suit, yet the Plaintiff might proceed for his Damages. *Co. Lit.* 285. *a.*

19. Yet if *Tenant* for another Man's Life brings an Aſſize, and the Life had dropt pending the Writ, the Writ ſhall abate, becauſe no Aſſize can be maintainable for Damages only.

20. So if an Action of *Waſte* be brought by Husband and Wife in Remainder in ſpecial Tail and pending the Suit; the Wife dies without Iſſue, the Writ ſhall abate, becauſe every kind of *Waſte* muſt be *ad exhæredationem.*

21. If an Action of Annuity be brought, and the Annuity determines pending the Suit, the Writ faileth for ever, becauſe no ſuch Action can be maintainable for the Arrearages only, but for the Annuity and Arrearages. *Co. Lit.* 285. *a.*

22. If a Parſon ſues out a Writ, and then reſigns, the Writ will abate; but if he be promoted again to the ſame Benefice before the Return, it is otherwiſe. And if one ſues out a Writ, and after is created a Biſhop, the Writ abates not, becauſe it is the Act of Law, but Reſignation is the Act of the Party. *Owen* 30, 31.

23. If *four* Commit a *Treſpaſs*, which is in its Nature joint and ſeveral, yet if the Plaintiff will bring his Action againſt one only, and declare that he with the other three did the *Treſpaſs*, his Action ſhall abate. *Hob.* 199.

But if he had brought his Action againſt one alone, and the Defendant had *pleaded*, that he with others did the Treſpaſs, and that the Plaintiff had releaſed to the other; and the Plaintiff denied the Releaſe, whereby he doth in a manner confeſs, that the others were joint Treſpaſſers, yet the Action ſhall not abate. *Ibm.*

24. If *A.* brings an Action of *Debt* upon a *Bond* againſt *B.* who pleads, that the Bond was made upon a Condition, that the Defendant ſhould perform the Award of two, and that they two, and a third made an Award, this is naught; but if the Plaintiff does alledge an Award by the two, or by the three, and alledges not alſo a Breach, whereby it may appear to the Court that he had a Cauſe of Action, he ſhall never have Judgment. *Hob.* 199.

25. If there be two *Tenants* in *Common*, and one only brings an Action where they ought to join; if this appears by the Plaintiff's own ſhewing, the Defendant may take Advantage of it upon the General Iſſue, but if it does not appear, then it ought to be pleaded in Abtement. *Latch* 153.

Of Pleas in Abatement, as to Miſnomer of Name, Addition or Degree.

1. The Defendant pleads in Abatement that his Name is *Jermy*, and not *Jermyn*, and pleads thus, *& prædictus J. Jermyn venit, &c.* this is naught by confeſſing the Name the Plaintiff uſes; it ſhould have been *Et ſuper hoc ven' J. Jermy & dicit quod ipſe eſt eadem perſona que arreſtat' fuit per nomen Jermyn & dic' &c.* Hill. 3 W. & M. Rot. 291. Show. Rep. 394.

2. The Defendant pleads in Abatement, that he was baptized by the Name of *John*, and by that Name always was called and known, *abſque hoc*, that his Name is *Benjamin*, tho' the firſt Part of the Plea is but an Inducement, yet *that* and the *Traverſe* are both Material, becauſe one may be baptized by the Name of *A.* and be confirm'd by the Name of *B.* 6 *Mod.* 115. 1 *Salk.* 6.

3. And where a Defendant comes in *gratis*, and pleads by the Name alledged by the Plaintiff, he is eſtopped to alledge any Thing againſt it. *Stile* 440.

4. Where one is miſnamed in a Bond, the Writ muſt be brought againſt him by the Name as in the Bond. *Dyer* 279.

5. If *A.* gives a Bond by the Name of *B.* and he is accordingly ſued by that Name of *B.* he may plead *Miſnomer*, and the other may *reply*, that he made the Bond by the Name of *B.* and eſtop him by demanding Judgment, if againſt his own Deed he ſhall be admitted to ſay his Name is *A.* and then he may *rejoin* and ſay, that he made no ſuch Deed, and this he muſt do without *Oyer*; for if he prays *Oyer*, he admits his Name to be *B.* *Salk.* 7. *Linch* v. *Hooke*.

6. If the Addition of the Defendant's Quality and Dwelling, be omitted in any original Writ in a perſonal Action, Appeal or Indictment, where exigent may be awarded, the Writ ſhall abate, but it ſhall not abate for Surpluſage in the Additions. 1 *Hen.* 5. *c.* 5.

7. A *Feme Covert*, after an Arreſt, giving Bail-Bond by a wrong Name, may plead the Miſnomer, and ſhe is not eſtopped by the Bail-Bond. 1 *Salk.* 7. *Linch* v. *Hooke*.

8. The Name of *Earl*, if omitted, abates the Writ. *Davis Rep.* 60. *a.* But if a Perſon is created an Earl pending the Action, Bill or Suit, it ſhall not abate. 1 *Ed.* 6. *cap.* 2. *Sect.* 3. But there muſt be an Entry on

the

on the Roll, with a *poſt ultimam continuationem, ſcilt'*, that ſuch a Day and Year, the King by his Letters Patents, *&c.* ſetting it forth with a *profert in Cur' & quod prædict' defendens non dedicit.*

9. If a *Baronet* is ſued by the Addition of a Knight and Baronet, the Writ ſhall abate. 1 *Ven.* 154.

10. To the Plea of *Miſnomer*, the Plaintiff may reply the Defendant was known by the Name in the Writ. 1 *Salk.* 6.

By Coverture.

1. If an Original be filed againſt a *Feme Sole*, and before the Return ſhe marries, you may declare againſt her without taking Notice of her Husband; for her Intermarriage is no Abatement of the Writ in Fact, but only makes it abateable. *Comb.* 449. 1 *Roll's Rep.* 53.

Variance.

1. If the Declaration aſſigns Waſte in a Town not mention'd in the original Writ, the Writ of Waſte abates. *Hob.* 38.

2. What Variance between a Bond and the Declaration abates the Writ, *ſee Hob.* 116. *Walter* v. *Pigot*, *Mo.* 645. 2 *Rolls* 147. 1 *Cro.* 896. *Hob.* 18, 19, 20.

3. Where the Writ ſhall not abate for Variance from the Regiſter, ſo that it be equivalent. *Hob.* 1, 51, 52.

4. If a Writ of ſecond Deliverance varies from the Declaration in Replevin, it ſhall abate the Writ. *Cro. Jac.* 424. *Newman* v. *Moore.*

Another Action for the ſame Thing pleaded.

1. It is reported in *Comb.* 144. in the Caſe of *Rawlinſon* againſt *Oriel* and others, that both Defendants may join in pleading a *Recovery* againſt one of them. *Carthew* 96. *The ſame Caſe.*

2. Where the Defendant pleads another Action depending in the ſame Court, and the Plaintiff demands *Oyer* of the Record, and 'tis not given him in a Convenient Time, the Plea ought not to be received, but the Plaintiff may ſign his Judgment. *Carthew* 454. *Theobald* v. *Long.*

3. And where an Action was brought for a Battery and Impriſonment, and the Defendant pleaded *another Action* depending in Abatement; the Plaintiff replied, *Quod non habetur tale Recordum, & petit quod Recordum illud inſpiciatur*, without giving the Liberty to the Defendant to rejoin, *quod habetur tale Recordum*; and it was held a good Replication. *Creamer* v. *Wickett*, *Carthew* 517.

4. If a *Quare Impedit* be purchaſed againſt two, depending a former *Quare Impedit* againſt one of them, tho' the Plaintiff declares upon a new Diſturbance, yet the Writ ſhall abate, for the Effect of the Suit is ſtill for the ſame Thing, (*viz.*) the Preſentation, and there are ſtill two Writs depending againſt one Man. *Hob.* 137.

But the Plaintiff may have as many Writs as he will againſt ſeveral Perſons. *Ibm.*

5. In an Action of *Trover* and *Converſion*, it is a good Plea that the Plaintiff had an Action depending for the ſame Converſion *in Banco Regis*, or any Writ that comprehends Certainty, but where there is no Certainty till after the Count it is no Plea. 5 *Co.* 62.

6. In an Aſſize of *Darrein Preſentment*, it is a good Plea in Abatement to ſay, that the Plaintiff had brought a *Quare Impedit* for the ſame Avoidance. *Hob.* 4.

7. If an Action of Debt, *&c.* be depending in an Inferiour Court, a Bill for the ſame Debt may be brought in any Court in *Weſtminſter.* 5 *Co.* 62.

8. In an Action of Debt, *&c.* another Action depending in the Courts of *Weſtminſter* for the ſame Matter, is a good Plea in Abatement; but a Plea of an Action in an Inferior Court is not good, unleſs Judgment be given. 5. *Co.* 68.

9. It hath been ſaid that a Writ of Error depending in the Exchequer, is a good Plea in Abatement to an Action of Debt, upon a Judgment in the King's Bench. 5 *Mod.* 68. *Comb.* 199. But the contrary hath been ſince held to be Law. 1 *Show.* 146. *Cumb.* 199. *Lut.* 600. *Denton* v. *Evans*, *Carthew* 136. 1 *Mod.* 121. 2 *Ven.* 261. 1 *Sid.* 236, 253. *Palmer* 187, 303. *Ray.* 100. 1 *Lev.* 153. 2 *Mod.* 194.

In ſome Caſes the Court may and will, Ex Officio, *abate the Writ.*

1. In a *Formedon*, the *Tenant* pleaded *Jointendncy* by Fine with *J. S.* the Demandant did aver the Tenant Sole Tenant; and upon that Iſſue was taken, and found for the Demandant; held that the Writ ought to abate *ex Officio*, without the Exception of the Party; for the Jointenancy being pleaded by Fine, ought to have abated the Writ, and no Averment by the Demandant againſt a Fine, which is Matter of Record, ought to have been received. And at Common Law, if the Tenant had pleaded *Jointenancy* by Deed, the Writ ſhould abate without any Averment, but that was remedied by 34 *Ed.* 1. However Jointenancy by Fine remains as it was at Common Law, for he hath Puniſhment enough by his Plea in that Caſe, if it ſhould be falſe, inaſmuch as he hath by way of Concluſion given the Moiety of the Land in Demand to him, with whom he hath pleaded the *Jointenancy.* 2 *Lev.* 62.

2. *A.* levies a Fine to the Uſe of *B.* in Tail, Remainder to *A.* then *A.* levies a Fine of the Reverſion to his own Uſe, *B.* dies without Iſſue, *A.* brings a *Formedon* in *Reverter*, and alledges, that the Land ſhould revert to him *ſecundum Formam* of the firſt Gift, whereas his Title is by the new Fine; tho' the Tenant has pleaded other Matter, yet he may as an *Amicus Cur'* inform the Court, and they may *ex Officio* abate it. *Hob.* 280, 281.

3. A *Scire facias* was ſued out againſt an Adminiſtrator, *Teſte* 12th of *Feb.* Defendant demanded *Oyer* of the Adminiſtration, which bore *Teſte* the 26th of *May* afterwards, and then pleaded that Matter in Abatement after Imparlance; and altho' it is not pleadable after a general Imparlance, yet the Court upon a Demurrer *ex Officio* abated the Writ. 2 *Lev.* 197.

4. If a *Quare Impedit* be brought againſt Parſon and Ordinary, and not againſt the Patron, it ought to have been pleaded in Abatement, but the Court *ex Officio*, it is ſaid, cannot abate the Writ. 2 *Roll's Rep.* 239.

It may not be improper to ſpeak ſomewhat of Journeys Accounts.

1. A Writ of *Journeys Accounts* is where a Former Writ abated for falſe *Latin*, Variance of Form, or other Defect of the Declaration, and 'tis *quaſi* a Continuance from the former Writ, in which the Plaintiff muſt recite, that the former Writ abated.

2. *A.* and *B.* *Jointenants*, *A.* ſuffers *C.* to occupy with him, *B.* brings Partition againſt *A.* and *C.* which abates, becauſe *C.* had nothing; he may have another *per Journeys Account.* 2 *Cro.* 218. *Bro. Journeys*, 1, 2, 3.

3. *J. S.* makes *A.* his Executor till *B.* comes to the Age of twenty-one Years; *A.* brings Debt, pending which *B.* comes of Age, he may continue the Writ by *Journeys*, otherwiſe had *A.* been appointed Adminiſtator *durante*, &c.

4. If it abates by *Jointenancy*, a Death of one Partner, or one Jointenant, new Writ may be had by *Journeys*, &c. *Bro. Journeys* 11, 12, 19.

5. If a Man brings an Action againſt an Executor who is outlaw'd, and the Judgment revers'd, he may immediately bring a new Action by *Journeys Accounts* and it will be deemed a Continuance of the ſame Action. *Winch* 82. 6. *Co.* 10, 11.

6. The new Writ differs from the old in the County, and Damages; and ſee within what Time it muſt be brought. *V. Lut.* 296.

7. A Writ cannot be by *Journeys Accounts*, by or againſt an Executor or Adminiſtrator, but only where the ſame Parties were Parties to the Writ, as if one Plaintiff or Defendant dies. *Lut.* 260. *Cro. Eliz.* 174.

Secondly, Of the Time and Manner of Pleading in Abatement.

1. If a Declaration be deliver'd againſt one in Cuſtody, he has the whole Term to plead in Abatement. *Salk.* 515.

2. What Time the Defendant hath to plead in Abatement. *Comb.* 251. *Holditch* v. *Aynſworth.*

3. There is uſually four Days Time to plead after a *Reſpondeas Ouſter. Comb.* 19.

4. In pleading in Abatement theſe Rules are to be obſerved in concluding the Plea.

5. If a Plea is pleaded to the Juriſdiction of the Court, it ought to conclude with a Prayer of Judgment in this Manner, *viz. The ſaid Defendant prays Judgment, whether the Court will take any further Cognizance of the ſaid Plea.*

If it be pleaded to the Perſon of the Plaintiff, there it muſt be *if he ought to be compelled to anſwer.*

If it be pleaded to the Writ, then the Plea concludes with the Prayer of Judgment of the Writ, and that the Writ may be quaſh'd.

When it is to the Action of the Writ, there he ſhould ſhew that the Party ought not to have that Writ, but by the Matter of his Plea ſhould Intimate to him how he ſhould have a better. *Latch* 178.

6. *Reſpondere non debet* is a proper beginning to a Plea to the Juriſdiction of the Court, but a Plea of *ne unques Executor*, ought to begin with *petit Judic' de Bill'.* 5 *Mod.* 146, 132, 133. 1 *Saund.* 283. 2 *Saund.* 97, 189, 190, 339. *Lut.* 44. *Show.* 4.

7. In a Replication to a Plea in Abatement where Matter of Fact is pleaded, the Plaintiff muſt pray his Damages; and if upon Iſſue Verdict be found for him he ſhall have final Judgment; but where Matter of Law is pleaded, the Plaintiff muſt only maintain his Writ. 3 *Annæ, in B. R.*

8. If one pleads Matter of Abatement, and concludes in Bar *Et petit Judicium ſi Actionem habere debet*, tho' he begins in Abatement, and the Matter be alſo in Abatement, yet the Concluſion being in Bar, makes it a Bar; and the Reaſon is, becauſe you admit the Writ by concluding ſpecially againſt the Action. 18 *H.* 6. 27. 32 *H.* 6. 17. 36 *H.* 6. 18. 22 *H.* 6. 536. 1 *Show.* 4.

9. If a Man pleads Matter in *Bar*, and concludes in *Abatement*, it ſhall be taken for a Plea in *Bar*, from the Nature and Reaſon of the Thing; for the Plaintiff can have no Writ if he has not a Cauſe of Action, and therefore the Court will take the Plea to be in Bar. 37 *H.* 6. 24. 36 *H.* 6. 24. 2 *Mod.* 6.

10. The Chief Juſtice delivered the Opinion of the Court, that a Plea was good in Bar, tho' pleaded in Abatement, and the Defendant hath his Election to plead, either in Bar or Abatement; the Nature of a Plea in Abatement, is to entitle the Plaintiff to a better Writ; but here the Defendant ſhews that the Plaintiff hath no Cauſe of Action, and ſo it ſhall be taken to be no Bar; and it hath been expreſly reſolved, that where the Plea is in Abatement, and it is of Neceſſity that the Defendant muſt diſcloſe Matter of Bar, he ſhall have his Election to take it either by way of Bar or Abatement. 2 *Roll Rep.* 64. *Salkill* v. *Shilton.*

11. The Defendant pleaded that he was an Attorney of the Common Pleas, and that he ought not to be ſued elſewhere without Conſent; the Plaintiff ſhews that he had his Conſent, but did not ſay where; the Replication was held ill. 1 *Salk* 4.

12. But where the Defendant pleaded that he was an Attorney of the Court of Common Pleas, but did not ſay where; it is ſaid that *Holt* held it good. *Salk.* 545.

13. And it is there ſaid that an Attorney of the Common Pleas need not plead his Privilege *ſub pede ſigilli*, to an Action brought againſt him in the King's Bench. *Salk.* 545. *Scawen* v. *Garrett.*

14. And this Difference is taken by my Lord *Holt*, that where an Attorney pleads his Privilege with a Writ *ſub pede ſigilli*, it is concluſive and cannot be denied; but where it is pleaded merely by Plea, there may go a *Certiorari* to have it certified whether the Defendant be an Attorney or not. *Dillon* v. *Harper*, *Salk.* 545.

15. *Venit & dicit* is ſufficient in a Plea to the Juriſdiction, and ſo is *dicit* only without *Venit*, if it appears he is *in Cuſtodia*. *Salk.* 543. *Kirkham* v. *Wheely*, 544. *Stephens* v. *Arthur*.

16. The Defendant pleads *quod ſuſcepit ordinem Militarem & jam Miles exiſtit*, but the Plea was ill, becauſe it was not ſaid he was a Knight *tempore exhibitionis billæ*. *Salk.* 6. *Lett* v. *Mills*; but not ſaying where *ſuſcepit ordinem Militarem*, was held well enough; and ſee the ſame Point, as to the firſt relating to an Attorney, in Title *Plea to the Juriſdiction*.

17. After a Bail-Bond forfeited, the Defendant cannot plead in Abatement to the original Action. *Salk.* 519.

18. Where *Jointenancy* is pleaded in Abatement, the Life of the other Jointenant muſt be averr'd. *Salk.* 32.

19. Where want of Addition of the Word *Junior*, as a *deſignatio Perſonæ* was not held ill, without ſhewing that the *Senior* was *in Cuſtodia Mareſcalli*, for any Matter that diſtinguiſhes the Perſons renders that Addition unneceſſary. *Salk.* 7. *Lepiot* v. *Browne*.

20. In *Replevin*, the Taking in another Place is a good Plea in Abatement, but if the Concluſion of the Plea is with a Prayer of a Return, it is ill. *Salk.* 3.

21. In *Replevin*, Property in a Stranger might be pleaded, either in Bar or in Abatement; and where a collateral Matter is pleaded in Abatement, the Defendant ſhall not have a Return without making an Avowry. But where the Plea in Abatement is to the Point of the Action, as Property is, the Defendant ſhall not have a Return without an Avowry; for whether the Property be in the Defendant or a Stranger, the Defendant ought to have a Return, becauſe he had the Poſſeſſion which was illegally taken from him by the Replevin, when the Plaintiff had a Right. *Salk.* 94. *Butcher* v. *Porter*, *Carthew* 243, 244.

22. The Court will not abate the Plaintiff's Writ or Bill, if not pray'd by a proper Concluſion. *Salk.* 298.

23. Where the Defendant pleads in Abatement a Matter of Fact, and the Plaintiff replies and traverſes the Matter of the Plea, he may conclude either Judgment, *ſi actio*, &c. or *quod reſpondeas ouſter*; for if the Defendant joins Iſſue it will be final; if he demurrs it will be that he anſwer over; but if the Joinder in Demurrer concludes in Bar, 'tis ſaid to be ill. *Comb.* 479. *Bennet* v. *Hill*.

24. Where an Action of Debt is brought upon a Bond for the Payment at ſeveral Days, and one of the Days is not yet come, the Defendant cannot plead Payment at two of the Days, and conclude in Abatement, but muſt plead it in Bar. *Comb.* 483. *Owen* v. *Bulkley*.

25. Where Judgment is, that the Defendant ſhall *anſwer over* on the firſt Plea in Abatement, it is an *Eſtoppel* to plead the ſame Matter again in Abatement. *Comb.* 465.

26. A Man ſhall not aſſign that for Error, which he might have pleaded in Abatement; and therefore, if an Infant with two others make Conuzance in Replevin by Attorney, and the Plaintiff is nonſuit, the Plaintiff cannot aſſign for Error that the Infant appear'd by Attorney, but he might have pleaded it in Abatement of the Conuzance; and if a Feme Covert brings an Action and recovers, the Defendant ſhall not aſſign Coverture for Error. *Carthew* 124. *Coan* v. *Bowles*, & *al'*.

27. Adminiſtrator and not Executor was pleaded without a Traverſe, and held well. *Carthew* 363.

28. To conclude *unde petit judicium ſi ad billam prædict. reſpondere compelli debeat*, is proper only in Nonability of the Perſon of the Plaintiff,

or to the Juriſdiction of the Court, and not to a Plea of being Adminiſtrator and not Executor. *Carthew* 364.

29. After an Imparlance, antient Demeſne may be pleaded in Abatement, and no other dilatory Plea. *Latch* 83.

30. No Advantage can be taken to a bad Declaration upon a Demurrer to a dilatory Plea. *Carthew* 172. *Lut.* 1592.

31. That an Attorney may plead his Privilege ſo long as he continues upon the Roll. *Lut.* 1666.

32. Q. of a Replication to a Plea of another Action depending, whether good or no, there being three Judges againſt one, of Opinion that it was good. *Lut.* 1644.

33. Where an Iſſue was joined by one Defendant, and the other demurs upon the Iſſue being found for the Plaintiff, the Writ ſhall abate as to both. *Hob.* 250.

Thirdly, Of the Judgment in Abatement.

1. If Iſſue be taken upon a Plea to the Writ, Judgment againſt the Defendant is *Peremptory*; but if there be a Demurrer, it is then only that the Plaintiff *anſwer over.* *Latch* 374. *Yelv.* 12. *Allen* 66.

2. Upon a Judgment in *Waſte* for the Damages recover'd, the Defendant demurs partly in Abatement, and partly in Bar, the Court ſhall give Judgment in *Chief.* *Show.* 255.

3. If the Defendant imparls to a Day in a perſonal Action, and does not appear at that Day, Judgment *final* ſhall be given againſt him; for the Default is *Peremptory* as to him, and there is no Proceſs to bring him into Court again, 38 *H.* 6. 33. ſo in Debt, if the Defendant pleads in Abatement to the Writ, to which the Plaintiff imparls, and at the Day given, the Defendant makes Default, Judgment *final* is upon the Default, tho' the Plea was only in Abatement. 10 *E.* 4. 7. *Mod. Caſes* 5.

4. A Writ of Error was brought upon a Judgment in a *Formedon* in *Remainder*, where the Tenant pleaded *Infancy*, and that the Remainder deſcended to him, and therefore prays that the Parol may demur by Reaſon of his Age; and the Demandant denies that the Remainder deſcended to him, upon which Iſſue was join'd, and it was found for the Demandant, and Judgment final; and the Court held, that notwithſtanding the Infancy, yet as Iſſue had been join'd upon a dilatory Plea, and tried by the Country, the Judgment ought to be peremptory. 1 *Lev.* 163.

5. Where Matter of Abatement is pleaded in Bar, there ſhall be Judgment in Chief. 1 *Lev.* 291.

6. Upon a Writ of Error of a Judgment given in the Common Pleas for abating a Writ in a real Action, the Judgment is reverſed in the King's Bench, the King's Bench ſhall proceed upon the Original Writ, and ſhall give ſuch Judgment as the Court of Common Pleas ought to have done, if the Writ had not been abated. 2 *Saund.* 256.

7. Upon a Writ of Error returned into the Exchequer before the Record tranſcribed, one of the Plaintiffs in Error dies, upon which the Plaintiff in the Action takes out an Execution, but it was ſuperſeded, for he ſhould have acquainted the Court with the Death of the Party; and the Lord Chief Juſtice *Holt* ſaid, the Sheriff might have a ſpecial Return to the Writ. *Beal & al'* v. *Penrys*, 9 *K. W.*

8. Where in an Action of Account as *Receiver*, the Writ ſhall abate as to that Part where the Defendant ought to have been charg'd as *Bailiff*, and Judgment ſhall ſtand good for the Reſt. 4 *Leon.* 39.

9. Where the Plaintiff ſhall not have Judgment on a *Scire facias*, the Plea not being adjudg'd *Peremptory*. 2 *Show.* 42.

For other Caſes as to Abatement of Writs, *vide* Appendix.

REFERENCES to other Precedents,

In Abatement.

Pleas to the Juriſdiction.

THAT the Action accrued out of the Juriſdiction of the Marſhalſea Court. 3 Inſtr. Cl. Fo. 14. 2 Mod. Intr. Fo. 1.

That the Lands are pleadable in the County Palatine of Cheſter. Rob. Entr. 1. 3 Inſtr. Cl. 14. Brown's Vade mecum 473. And a Demurrer, for that this Plea is after Imparlance. 2 Mod. Intr. 1.

That the Lands are held in ancient Demeſne; Replication, that they are held in Fee at Common Law. Br. Red. 504. 3 Inſtr. Cl. 9. 2 Mod. Intr. 2. That Lands are pleadable in a Manor Court, and not elſewhere. Br. Red. 504. 3 Inſtr. Cl. 8. Tho. 2. 2 Mo. Intr. 2.

That the Place where, is within the Cinque Ports. Br. R. 475. 3 Inſtr. Cl. 7. 2 Mod. Intr. 2.

By Miſnomer of the Perſon.

Of the Chriſtian Name. Tho. 1. Pl. Gen. 8. 3 Inſtr. Cl. 68, 70. 2 Mod. Intr. 12. Clif. 16. Cl. Aſſ. 12. Reg. Plac. 289. Raſtall 276.

Of Surname. 1 Bro. 3 Tho. 1. 3 Inſtr. Cl. 67. Reg. Plac. 288. Cl. Man. 435. Han. 119. Raſtall 49, 50, 54, 108, 296, 334, 516, 616.

For Incertainty and Miſnomer of the Place.

Plea by Two, as to One, for not diſtinguiſhing him from J. C. the Elder, there being Two of the ſame Name; as to the other Noncommorancy. 3 Inſtr. Cl. 68. Raſt. 496.

In the Name of the Town. 3 Inſtr. Cl. 72. Cl. Aſſ. 4. 1 Bro. 2. 2 Mod. Intr. 341, 343. Raſt. 610, 47, 108, 900, 301, 615.

That the Deed was made to the Father deceaſed, and not to the Son of the ſame Name. Clif. 7.

Miſtaking of the Place where the Treſpaſs is ſuppoſed, that it is in another Vill. Reg. Pl. 287. Replication and Iſſue. Cl. Aſſ. 3.

Of the Pariſh in Appeal of Murder. Br. Red. 2. Reg. Plac. 284.

In Treſpaſs. That the Certainty of the Number of the Cattle is not contain'd in the Writ. 1 Bro. 1.

By Nullity.

No ſuch Perſon. Pl. gen. 8. 3 Inſtr. Cl. 77. 2 Mod. Intr. 13. Raſt. 49, 92.

No ſuch Vill. 3 Inſtr. 77. Reg. Pl. 287. Raſt. 108, 298, 334, 353.

Miſtaking of the Place of Abode.

That he was commorant at B. and Traverſe, that he was commorant at C. 1 Bro. 6. 3 Inſtr. Cl. 81. Cl. Aſſ. 13. Han. 268. Raſt. 108, 195, 299, 126, 108, 300, 298.

For Miſtaking the Degree or Addition.

That the Defendant is a Yeoman, and not a Gentleman. Pl. Gen. 4.

Gentleman and not a Broker. Ro. 91. Raſt. 108, 570, 298.

That the Plaintiff loſt her Dignity by Marriage. 1 Bro. 3.

That the Defendants have no Additions as Executors. 1 Bro. 3. 3 Inſtr. Cl. 50.

Chapman and not a Huſbandman. 3 Inſtr. 80.

Butcher and not a Huſbandman. 2 Mod. Intr. 12.

That the Plaintiff was a Knight at the Time of ſuing out the Writ. Cl. Aſſ. 1. 3 Inſtr. Cl. 81. Reg. Pl. 287.

That the Defendant is a Gentleman, and not a Doctor of Phyſick. Clif. 16.

That the Defendant is a Baronet, and not a Knight and Baronet. 1 Ven. 154. Clif. 17.

By miſtaking the Vill or Pariſh.

In Appeal, that there is ſuch a Pariſh call'd by the Name of the Pariſh of St. James, within the Liberty of Weſtminſter, but not St. James's, Weſtminſter. 1 Bro. 2 Bro. R. 2. 2 Mod. Intr. 13.

In Dower, That Part of the Lands demanded lie in M. and not in E. or W. Replication, That M. is the Hamlet of E. Ro. Entr. 285.

Formedon, That Part of the Lands lie in G. and Traverſe, that they lie in H. and Iſſue thereupon. 2 Bro. 165.

In Treſpaſs at R. and C. that C. is within the Vill of R. Parcel of the ſame. Cl. Aſſ. 3. 13.

By Defect of Addition in the Vill or Hamlet. Clif. 15, 16.

By Death.

Becauſe the Plaintiff died after the laſt Continuance. Thomp. 3. with their Replication and Iſſue. 1 Bro. 3. 8. Pl. Gen. 7. Br. R. 199. Cl. Aſſ. 6, 7. 3 Inſtr. Cl. 64. Reg. Pl. 293. Raſt. 108.

The like in the King's Bench. Thomp. 3, 171. In Debt againſt Two Adminiſtrators, that one died after the laſt Continuance. Br. R. 175.

The Death of one of the Defendants, the other prays an Imparlance, and pleads it. Han. 112.

That the Plaintiff died before the ſuing out of the Writ, with the Replication, that he is alive. 3 Int. Cl. 65. Clif. 6.

In a Scire Facias, that one Plaintiff died. Replication, that he is alive. Off. Br. 345.

In Appeal of Murder, that the Elder Brother of the Appellant was alive, and died ſoon after the iſſuing out of the ſame. Han. 258.

In Treſpaſs againſt A. and B. Not Guilty pleaded by B. and A. died after ſuing out the Writ. Replication, that he was alive. Cl. Aſſ. 10. 2 Mod. Intr. 15.

In Quare Impedit by Huſband and Wife, that ſhe died after the laſt Continuance. Wi. Intr. 771.

In Formedon, after Oyer and the laſt Continuance, and a new Writ by Journey's Accounts. Pl. Gen. 3.

Coverture.

In the Plaintiff. 1 Bro. 7. Br. R. 181, 203, 204. 3 Inſtr. Cl. 30. 2 Mod. Intr. 7. Clift 8. 14. Rob. Entr. 3. Pl. Gen. 4. 134. Thomp. 1. 1 Bro. 63. Raſt. 138, 326.

Not lawfully Married. Cl. Aſſ. 78. 3 Intr. Cl. 60. Hanſ. 103. That the Plaintiff, after the laſt Continuance of the Writ of Scire Facias, was married. Special Demurrer, and Judgment, that the Defendant ſhould anſwer over. Vid. 77.

In the Defendant. Hanſ. 104. Cl. Aſ. 5, 14. 3 Inſt. Cl. 60, 61, 62. Reg. Pl. 290. Pl. Gen. 4 Cl. Ma. 435. 2 Mo. Intr. 7. Clif. 5. Cl. Aſſ. 81. Br. R. 203.

By Things done after the Original ſued out.

Ejectment, That the Plaintiff enter'd into the Lands after the laſt Continuance. Pl. Gen. 1. Herne 7. Raſt. 30.

Dower, That the Demandant, after Verdict and before Judgment, enter'd into the Lands. Pl. Gen. 1. 3 Inſtr. Cl. 96. Raſt. 234.

Debt upon a Bond, That the Plaintiff, after Original ſued out, made Acquittance to him of Part of the Debt. Replication, That the Defendant was obliged in another Writing, and the Plaintiff made an Acquittance for that Rejoinder, that there was an Acquittance for Part of the Debt above demanded, and Iſſue. Pl. Gen. 5, 320. 3 Inſtr. Cl. 94, 95. Raſt. 11.

That Plaintiff releaſed to Defendant after the Writ iſſued. Pl. Gen. 5. 6. 1 Bro. 8. Tho. 2. Han. 102. Ro. Intr. 3. R. Pl. 293. Cl. Aſſ. 10.

That it evidently appear'd by the Declaration, that the Demiſe was made after exhibiting the Bill. Tho. 2.

Defendant pleaded, That an Award was made after the laſt Continuance. Replication, that no Award was made, and Iſſue. Br. 181.

Writ of Error in the Exchequer Chamber, to quaſh the Writ. Clif. 13.

By Action ill founded.

That the Plaintiff iſſued his Original Writ before the Day of Payment. 1 Bro. 1, 3. Pl. Gen. 246. 3 Inſtr. Cl. 52. Br. 259.

Writ iſſued before the Day of Appearance, pleaded to a Bail-Bond. Clif. 18.

In Treſpaſs, That the Plaintiff brought his Writ before the Treſpaſs made. 1 Bro. 4. 3 Inſtr. Cl. 54. 2 Mo. Intr. 15. Clif. 19.

That no Writ of Ca. Sa. was ſued out before the Sci. Fa. againſt the Bail. 3 Inſtr. Cl. 53.

That the Writ iſſued before the Cauſe of Action. Clif. 10, 19.

In Debt, by Baron and Feme. Plea, That the Plaintiffs brought their Writ before the Marriage celebrated. Replication, That they were married before iſſuing out of Original. 1 Bro. 4.

The like againſt one Executor, That the Teſtator made the Defendant and one B. Executors, which ſaid B. is alive, and not named in the Writ. Replication, that the Teſtator did not conſtitute B. his Executor, and Iſſue. 1 Bro. 4. Tho. 1. 3 Inſtr. Cl. 46, 47, 78. Pl. Gen. 11, 12. 2 Mo. Intr. 18. Han. 102. Ro. Entr. 229.

That Adminiſtration was granted to another, and not to him. Cl. Aſſ. 105.

That A. made T. and W. Executors, and Traverſe that A. died Inteſtate. Tho. 140. 3 Inſtr. Cl. 47. Bro. V. M. 465.

That the Teſtator made the Plaintiff and another Executors, and Traverſe, that the Plaintiff is ſole Executor, and Replication. Bro. Red. 200.

That the Teſtator made the Defendant and another Executors, not named in the Writ. Replication, That the Executor not named, died before the Original ſued out. Bro. Red. 199. Clift. 15.

That Adminiſtration was granted to the Defendant, and another who is alive and not named in the Bill. Tho. 1. Pl. Gen. 337. 2 Mo. Intr. 18.

Adminiſtrator, and not Executor. Replication, That he is Executor, with a Traverſe. Pl. Gen. 2, 3, 6. Clif. 15, 16. 2 Ven. 178. The like with a Traverſe. Tho. 221.

That the Teſtator was alive at the Day of Exhibiting the Bill, and Replication. Pl. Gen. 336. Han. 107.

That the Bond was made to Two, and that it doth not appear that One is dead. 1 Br. 4.

That the Bill is in Caſe, and ought to be in Account. 2 Mo. Intr. 18.

That the Plaintiff is within Age, and ought to ſue by his Guardian or next Friend, and not by Attorney. 1 Bro. 2. Br. R. 475. 3 Inſtr. Cl. 55.

Debt againſt an Heir, That there is another who was Heir and alive, againſt whom the Action ought to have been brought. Tho. 9. 3 Inſtr. Cl. 48.

That there is a Party named in the Writ, who did not ſeal the Indenture. Clif. 4.

That there is a Partner not named in the Writ. Clift. 8.

In a Formedon in Reverter v. Husband and Wife, That the Reverter is alledged to the Wife only, which ought to have been to the Husband and Wife. 3 Inſtr. Cl. 105.

The like in Diſcender, That the Plaintiff named in the Writ, as Son and Heir of H. only, whereas it ought to be Son and Heir of H. and A. his Wife, which the Plaintiff acknowledges. 1 Bro. 170.

Quare Impedit upon the Statute of Simony, abated, for that the Patron was not named in the Writ with the Defendant. Demurrer thereupon, and Noli Proſequi by the Attorney General. Bro. R. 410. The like 3 Lev. Rep. 15. Clif. 23.

Becauſe the Action is placed in a wrong County, Clif. 6. that the Property is in the Defendant. 107.

In Replevin by Husband and Wife, that the Property in the Goods was the Husband's only. 3 Inſtr. Cl. 55. Cl. Aſſ. 9. Reg. Pl. 292. 2 Mo. Intr. 17.

In Formedon in Deſcender, that it ought to be in Remainder. Hern 463.

By another Action depending.

In Debt. 1 Br. 6.

That the Defendant was impleaded in the Mayor's Court in the ſame Cauſe of Action. Rob. Entr. 222.

The Heir at Law being ſued upon the Bond of the Anceſtor, pleads, That the Plaintiff had an Action depending againſt him as Executor. 3 Lev. 25. Lev. Entr. 54, 55.

Plea of another Action depending in falſe Impriſonment. Br. 220. 2 Mod. Intr. 14. The like in Treſpaſs. Clif. 89, 22. The like upon the Statute of the Fifth of Elizabeth, for exerciſing a Trade contrary to the Statute, with a Replication, That it was had by Fraud, with a Rejoinder and Iſſue upon the Fraud. Tho. 6.

The like Plea, with Replication of no ſuch Record, and Iſſue thereon, and a Day given to bring in the Record. Tho. 148. Vid. 187.

To an Information, that the Informer exhibited a former Information for the ſame Offence. Bro. Red. 437.

Quare Impedit that the Plaintiff brought another Writ againſt the Biſhop only, and that the ſame is depending, with Replication and Demurrer. Wi. Entr. 783.

As to Part, that he oweth nothing; as to the other Part, an Action depending. 3 Inſtr. Cl. 97.

For Default in the Writ.

That it is contrary to the Form of the Regiſter. 1 Bro. 1. 3 Inſtr. Cl. 51, 57. Ro. Entr. 1.

For material Words omitted. Cl. Aſſ. 2, 14. 1 Br. 1. Han. 103. Reg. Pl. 291. 2 Mo. Intr. 12. Aſh. 6. Herne 6.

That there are but Fourteen Days between the Teſte and Return. 3 Inſtr. Cl. 59. Aſh. 6.

That the Wife is put before the Husband, Acknowledgment of the Miſtake, and hath a Writ by Journeys Accounts. Cl. Aſſ. 12. Reg. Pl. 289. Herne 7.

That it doth not appear, that the Plaintiff hath found Pledges. Ro Entr. 1.

That there are other Tertenants not named in the Writ. 2 Ven. 103. Co. Entr. 624.

To a Venire Facias at the Niſi Prius, that it was directed to the Sheriff of S. whereas the Iſſue ought to have been tried by Men of the City of L. and a new Venire Facias awarded. 1 Bro. 2.

For Inſufficiency in the Return of the Original. 2 Mo. Intr. 12.

That the Writ of Scire Facias is not directed to the Sheriff of the County where the Record of the Judgment is. Clif. 11.

For Variance.

Between the Writ and Declaration. 3 Inſtr. Cl. 39, 45. Reg. Pl. 277. 2 Mo. Intr. 9. Aſh. 4.

Between the Bond and the Writ. 3 Inſtr. Cl. 39, 100. Cl. Aſſ. 2, 3. Reg. Pl. 278, 281. Aſh. 3, 4. Raſt. 459.

Between the Plaint and the Declaration. Clif. 20.

Between the Writ and the Will. Cl. Aſſ. 14. Reg. Pl. 280. 3 Inſtr. Cl. 40, 42. 2 Mo. Intr. 11. Aſh. 5.

Between the Writ and the Regiſter. Reg. Pl. 276. 2 Mo. Intr. 10.

Between the Plaint in the inferior Court and the Declaration above. Br. Red. 1, 2. Reg. Pl. 282.

Between the Original and Letters of Adminiſtration. 3 Inſtr. Cl. 44. 2 Mo. Intr. 11. Aſh. 4.

By Privilege or Dignity of the Perſon of the Defendant.

That the Defendant is a Baron of the Cinque Ports, where, and not elſewhere he ought not to be impleaded by Letters Patent, Edward 1. and confirm'd by Eliz. Ro. Entr. 199. Cl. Aſſ. 10.

That the Defendant is a Tally-cutter and a Receiver of the Exchequer. Tho. 3.

Plea for a Deputy Serjeant at Arms, Treaſurer of the Exchequer, impleaded in the King's Bench. Tho. 4.

The ſame for a Clerk of the Exchequer after a ſpecial Imparlance. Tho. 118.

Privilege by Marſhall of the King's Bench, by an Action brought by an Attorney in the Common Pleas. 2 Bro. 60.

By a Senior Filazer of the Common Pleas impleaded in the King's Bench. Tho. 4.

By an Attorney of the Common Pleas. 2 Mo. Intr. 7. Tho. 4, 3. Inſtr. Cl. 32. Si'le Br. V. M. 496. 3 Inſtr. Cl. Si'le 32. 2 Mo. Intr. 8.

The like for a Chancery Clerk impleaded in the King's Bench. Tho. 3. Si'le 3 Inſtr. Cl. 30. Si'le Br. V. M. 497, 500.

By a Servant of a Serjeant's Clerk in Chancery, in the King's Bench. Ro. Entr. 210.

Defendant is a Serjeant at Law, Cl. Aſſ. 5.

Privilege as Servant to the Houſe of Lords. Vid. 93.

By the Diſability of the Perſon of the Plaintiff.

That the Plaintiff is an Alien Enemy. Replication, That he was born under the Allegiance of his Majeſty. 3 Inſtr. Cl. 15. 2 Mo. Intr. 3. Clift 4. Cl. Aſſ. 113.

That the Plaintiff is excommunicate. 1 Bro. 5. Tho. 9. Vid. 25. Pl. Gen. 9. bis Br. R. 100. 3 Inſtr. Cl. 17. 2 Mo. Intr. 3. Clif. 13. Pl. Gen. 10. Replication, That the Plaintiff is abſolved from Sentence of Excommunication and Judgment for the Plaintiff, That the Defendant ſhould anſwer over. Pl. Gen. 10. and from 72 to 76.

That the Plaintiff is a Popiſh Recuſant Convict, and hath not conform'd. 1 Bro. 5. Tho. 185. Br. R. 466. 3 Inſtr. Cl. 19. 2 Mo. Intr. 5. Clift 3, 11. Wi. Entr. 752.

Outlawry on an Action upon the Caſe after Judgment. Replication, No ſuch Record. Rejoinder, That there is ſuch a Record, and the Defendant at the Day fail'd in his Record. 1 Bro. 7. 2 Mo. Intr. 4, 5. Tho. 8, 9. Ro. Entr. 214. Clif. 14, 3.

That the Plaintiff was fore-judged. Clif. 5, 9. 3 Inſtr. Cl. 22, 24, 27.

By Privilege of Lands.

That the Place where, &c. is held of the King, as of his Manor of B. which is of ancient Demeſne. Replication, That it is pleadable at Common Law. 1 Bro. 2.

That the Place where, &c. and all other Lands in that Manor, are held of the King, and pleadable in the Manor Court, and not elſewhere. Replication, That the Place where, &c. is pleadable at Common Law. Tho. 2. 3 Inſtr. Cl. 8. Han. 103.

That the Lands are held of the Manor of B. which is of ancient Demeſne. Tho. 2. Mo. Intr. 249. Ro. Entr. 58, 101. Vet. Int. 91.

That the Land is within the Manor of C. and that it is held of E. as of the Manor of N. which is likewiſe within the Manor of C. which is held of the Prince, and in Parcel of the County Palatine of Cheſter; and that all Lands, as well in the County of Cheſter as out-held of the County of Cheſter, are pleadable before the Juſtices there, and not elſewhere. Demurrer thereto. Ro. Ent. 1. Inſtr. Cl. 14. and Bro. Vade Mecum 473. Ra. 419. Vet. Intr. 33.

In Treſpaſs, That the Place where, &c. is within the Cinque Ports. 3 Inſtr. Cl. 7. Br. R. 475.

In Partition, That Lands held of the Manor of B. which is of ancient Demeſne, and pleadable in the Court of the Manor by Writ of Right. Replication, That the Grandfather of the Plaintiff held the Tenements of the King, as of his Caſtle of W. in Free Socage, and Traverſe, That it was held of that Manor. Wi. 1. Entr. 517.

Treſpaſs, That the Lands are ancient Demeſne. Replication, That a Fine was levied to R. Rejoinder, That the Cloſe in the Declaration is not contain'd in the Fine. Tho. 347. Br. R. 504. Ro. Entr. 250. Tho. 348.

That the Houſe and Cloſe were Parcel of the Manor of D. and are held of the ſame Manor, which is of ancient Demeſne. 3 Inſtr. Cl. 9. Hern 351.

By Non-Summons.

Upon a Scire Facias againſt the Tertenants, who pleaded in Abatement, that one of the Tenants was not ſummon'd, upon which a Scire Facias is awarded againſt him, and upon the Scire Facias return'd a Reſpondeas Ouſter awarded. 2 Saund. 8. 2 Ventris 163.

The like to a Return of Grand Cape. 3 Inſtr. Cl. 84, 93.

By Non-Tenure.

In Dower. 1 Bro. 205. 2 Mo. Intr. 16. Ra. Entr. 232, 231.

The like to Part. Ro. Entr. 24. 1 Bro. 202.

The like in Formedon. 2 Bro. 164. Ra. Entr. 440, 364. Co. Entr. 329. Aſh. 325.

In a Writ of Right, Non-Tenure pleaded. Replication, That he is Tenant. Iſſue, with Verdict, Iſſue and Judgment thereon, and a Writ of Seiſin awarded. 1 Bro. 314.

The like Plea to Part. The like Replication, and Plaintiff puts himſelf upon the Great Aſſize. 1 Bro. 313. Ra. Entr. 449.

In Formedon Non-Tenure, Non-Tenure pleaded to Part of the Lands and Rent. Ra. Entr. 417.

In Aſſize, Non-Tenure pleaded. And if, &c. the Plaintiff never was ſeized; and if, &c. no Tort, &c. Ro. Entr. 128.

For that the Defendant was not Tenant of the Freehold at the Time of the Writ. 3 Inſtr. Cl. 83. Replication and Iſſue, the like in Cl. Aſſ. 8. Bro. V. M. 459.

To a Return of Grand Cape, Two pleaded Non-Tenure to the Writ, the Third pleaded, that he is ſole Tenant, and was never ſummon'd. 3 Inſtr. Cl. 84. Ra. Entr. 281.

Defendant pleaded, That the Tenements deſcended to his Father, who is yet ſeized. 3 Inſtr. Cl. 86.

In Formedon Non-Tenure pleaded in Abatement after Imparlance; Plaintiff replies, that the Tenant, after ſuing out of the Original, enfeoffed divers Perſons unknown by Fraud, and that he could have no Notice of the Perſons againſt whom the Writ of Formedon in Diſcender iſſued; That the Defendant continually received the Iſſues and Profits, by which, and by Force of the Statute, he ought to be adjudged Tenant, being Pernor of the Profits. Demurrer thereto. 3 Lev. Rep. 52. Ra. Ent. 363.

By Jointenancy, Tenancy in Common, and Non-Tenure.

That the Plaintiff hath nothing in the Lands in which, &c. unleſs in common with W. Replication, by new Aſſignment. Tho. 12. Han. 103. 3 Inſtr. Cl. 87.

That the Plaintiff, at the Time of the Treſpaſs, had nothing, unleſs together, and for an undivided Part with J. W. 3 Inſtr. Cl. 89. Replication, and new Aſſignment. Clift 23.

That the Plaintiff had nothing in the Meſſuage newly aſſign'd, unleſs in common with P. Replication, That the Plaintiff is ſole ſeized; and Traverſe, That P. had any Thing. 1 Bro. 8. Han. 103.

Formedon againſt C. and D. C. pleaded Jointenancy with D. and one S. of the Gift of D. D. pleads Non-Tenure; Replication, That C. and D. are Tenants in common, and Traverſe that S. hath any Thing. Ra. Entr. 362.

In Dower Jointenancy with the Wife to Part, Non-Tenure to the Reſidue. 3 Inſtr. Cl. 92. 2 Mo. Intr. 16. Ro. Entr. 267. Ra. Ent. 233. Vet. Ent. 114. Aſh. 10.

In Aſſize, Diſclaimer by one, ſome other Defendants plead, That they held jointly with R. and H. by a Deed of J. brought into Court. Replication, That the Defendants are ſole Tenants; and Traverſe, that they have any Thing. Scire Facias to maintain the Tenure jointly. Pl. Gen. 120. Ro. Entr. 134. Ra. Ent. 66. Vet. Ent. 143.

By Sole-Tenure.

In Formedon. Ra. Ent. 364, 365.

Dower againſt Two. Each pleads that he holds in Severalty as to Part, and to the Reſidue they plead ſeverally Non-Tenure. Ro. Ent. 267.

In Aſſiſe by One, no Wrong by the other, that he is ſole Tenant, and Traverſe that others have any thing in the Tenements. And if, &c. **no Wrong.** 2 Bro. 42. 3 Inſtr. Cl. 93.

In Grand Cape. Ra. Ent. 248, 271, 282.

Petit Cape. Ra. Ent. 270, 271.

In a Writ of Entry. Ra. Ent. 272, 273.

In a Juris utrum. Ra. Ent. 419.

Demurrer and Eſtoppel in Abatement.

Eſtoppel. That the Tender ought not to be pleaded after a Special Imparlance. Clif. 17, 19, 203, 18, 21.

The like, becauſe the Variance was pleaded after Imparlance. Cl. 20. Tho. 2, 18. 1 Bro. 8.

Account.

Pierce againſt Clarke.

Michaelmas 11 *of King William* 3. *Roll* 787. *C. B.*

In Account againſt Bailiff. Lut. 58.

Otherwiſe as it appeareth in *Hillary* Term, in the Ninth Year of the Reign of his preſent Majeſty, in the *Roll*, Nº 1659, it is thus contained: *Suſſex*, (to wit) *John Clarke*, late of the City of *Chicheſter*, in the County aforeſaid, Gentleman, was ſummoned to anſwer to *Richard Pierce*, Gentleman, of a Plea, that he ſhould render to him his reaſonable Account during the Time he was Bailiff to the ſaid *Richard*, in the Pariſh of *Boſham*, *and ſo forth*; and thereupon the ſaid *Richard*, by *John Wakeford* his Attorney, ſaith, That whereas the ſaid *J. C.* had been Bailiff to the ſaid *R.* at the Pariſh of *Boſham* aforeſaid, from the First Day of *May* in the Third Year of the Reign of his preſent Majeſty, until the Tenth of *October* then next following, and during all that Time had the Care and Management of One Hundred and Thirty-two Buſhels of Wheat, to the Value of Twenty-five Pounds, of the ſaid *Richard*, to merchandize and make Profit thereof for, and to render a reaſonable Account thereof to the ſaid *R.* whenever he ſhould be thereto requeſted; nevertheleſs the ſaid *John*, though often requeſted, hath not yet rendred an Account thereof to the ſaid *R.* but hitherto hath altogether refuſed ſo to do; wherefore he ſaith that he is thereby injured, and hath ſuſtained Damage to the Value of Thirty Pounds, and therefore brought this Suit, *and ſo forth*.

Bar that he hath fully accounted.

And the ſaid *John Clarke*, by *James Vavaſor* his Attorney, comes and defends himſelf againſt the Force and Injury, and the Damages, and whatſoever elſe he ought to defend, when this Court will be pleaſed to take the ſame into Conſideration, and ſaith, that the aforeſaid *R.* ought not to have his Action thereof againſt him, becauſe he ſaith, that after the Time that the ſaid *J.* was ſuppoſed to be Bailiff to the ſaid *R. C.* and to have had the Care of the aforeſaid One Hundred and

Thirty-two Buſhels of Wheat, (*to wit*) the Eleventh Day of *October*, in the Seventh Year of the Reign of his ſaid preſent Majeſty, at the Pariſh of *Boſham* aforeſaid, he the ſaid *J.* fully accounted with the ſaid *R.* of and concerning the ſaid Buſhels of Wheat, for the ſaid Time he was ſo Bailiff, as above: And this he is ready to verify; and therefore he prayeth Judgment if the ſaid *Richard* ought to have his ſaid Action aforeſaid againſt him, *and ſo forth.*

Replication that he hath not accounted, and Iſſue thereon.

Venire awarded.

Another Venire.

Another Venire.

The Jury put in Reſpect.

The Parties appear at the Aſſizes.

The Poſtea, which is returned by the Aſſociate, indorſed on the Back of the Record of Niſi Prius.

Verdict for the Plaintiff.

And the ſaid *Richard* ſaith, That for any Thing above by the ſaid *John* in Pleading alledged, he the ſaid *Richard* ought not to be precluded from having his Action thereof againſt him; becauſe he ſaith, That the ſaid *John* hath not accounted with the aforeſaid *Richard* for the ſaid One Hundred and Thirty-two Buſhels of Wheat, as the ſaid *John* hath above in Pleading alledged: And this he prayeth may be tried by his Country; and the ſaid *John* likewiſe prays the ſame: Therefore the Sheriff is commanded, that he cauſe to come here in Eight Days of the Purification of the Bleſſed Virgin *Mary*, Twelve free and lawful Men of the Body of his County, every one of which to have at leaſt Ten Pound a Year, of Lands, Tenements, or Rent, by which the Truth of the Matter may be the better known, and who are no ways related either to the ſaid *Richard* or *John*, to recognize and make a certain Jury of the Country between the Parties aforeſaid, of a Plea of Account; becauſe, as well the ſaid *Richard* as the ſaid *John*, between whom the Controverſy is, have ſubmitted themſelves to the Jury; at which Day came here the Parties aforeſaid, but the Sheriff hath not return'd the Writ; therefore the ſaid Sheriff is, as before, commanded, that he cauſe to come here on the Morrow of the Aſcenſion of our Lord, Twelve, *and ſo forth*, to recognize in Form aforeſaid, *and ſo forth*, at which Day came here the Parties, *and ſo forth*, but the Sheriff hath not return'd the Writ; therefore the ſaid Sheriff is, as before, commanded, that he cauſe to come here in Three Weeks from the Day of the *Holy Trinity*, Twelve, *and ſo forth*, to recognize in Form aforeſaid, *and ſo forth*, at which Day the Jury in the ſaid Cauſe between the ſaid Parties were reſpited until this Day, (*that is to ſay*) from the Day of St. *Michael*, in Three Weeks, to be then here, unleſs the Juſtices of our Sovereign Lord the King, appointed to take the Aſſizes in the County aforeſaid, by the Form of the Statute, *and ſo forth*, had come before that Time, (*to wit*) on *Monday* the Fifteenth of *Auguſt* then next following, at *Horſham* aforeſaid, in the County aforeſaid: And now here at this Day cometh the ſaid *Richard*, by his ſaid Attorney; and the aforeſaid Juſtices appointed to take the Aſſizes before, *and ſo forth*, ſent here the Record in theſe Words —— Afterwards the Day and Place within contained, at the Aſſizes, appointed to be held in the County of *Suſſex*, by the Form of the Statute, *and ſo forth*, before Sir *John Holt*, Knight, his Majeſty's Chief Juſtice aſſign'd to hold Pleas before the King himſelf, and Sir *Henry Hatſel*, Knight, one of the Barons of the ſaid King's Exchequer, came as well the within written *R. P.* as the within written *John Clarke*, by their Attornies within contained: And the Jurymen of the Jury whereof Mention is made within, thereto required, likewiſe came; who being elected, tried, and ſworn to ſpeak the Truth of the within Contents, upon their Oaths ſay, that the aforeſaid *John Clarke* did not account with

Judgment that the Defendant ſhall account.

Capias awarded againſt the Defendant.

the ſaid *Richard* for the within written One Hundred and Thirty-two Buſhels of Wheat, as the ſaid *Richard* within in his Replication hath alledged; therefore it is conſidered that the aforeſaid *John Clarke* ſhall account with the ſaid *Richard* for the Time and Wheat aforeſaid, and the ſame *John* ſhall be at the Mercy of the Court, becauſe he had not before accounted for the ſame; and the Sheriff is commanded that he take the ſaid *John Clarke*, if he may be found in his Bailiwick, and him ſafely keep, ſo that he have his Body before the Juſtices here, from the Day of St. *Martin*, in Fifteen Days, to account with the ſaid *Richard* for the aforeſaid One Hundred and Thirty two Buſhels of Wheat, he being convicted of not accounting in Form aforeſaid; at which Day came here the aforeſaid *Richard*, by his Attorney, and the ſaid *John Clarke* did not come; and the Sheriff returned, that he is not to be found, *and ſo forth*; therefore the ſaid Sheriff is commanded, as before, that he take the ſaid *John Clarke*, if, *and ſo forth*, and him ſafely keep, *and ſo forth*, ſo that he have his Body before the Juſtices here in Eight Days of St. *Hillary*, to account with the ſaid *Richard* as aforeſaid; at which Day came here the aforeſaid *Richard*, by his ſaid Attorney, and the Sheriff hath done nothing thereupon, nor returned the Writ; therefore, as above, another Writ was deliver'd to him in Form aforeſaid, returnable here from the Day of *Eaſter*, in Fifteen Days; at which Day came here the aforeſaid *Richard*, by his ſaid Attorney, and the Sheriff hath done nothing thereupon, nor returned the Writ; therefore, as above, another Writ is made and deliver'd to him in Form aforeſaid, returnable here on the Morrow of the *Holy Trinity*; at which Day came here the aforeſaid *Richard*, by his ſaid Attorney, and the Sheriff hath done nothing thereupon, nor returned the Writ; therefore, as above, another Writ is made and deliver'd to him in Form aforeſaid, returnable here from the Day of St. *Michael*, in Three Weeks; and now at this Day (*to wit the aforeſaid Three Weeks of St.* Michael) came here as well the aforeſaid *Richard*, by his ſaid Attorney, as the ſaid *John Clarke* in his proper Perſon, and thereupon the ſaid *John* freely offered himſelf here in Court, to account with the ſaid *Richard* for the Time aforeſaid, and for the ſaid One Hundred and Thirty-two Buſhels of Wheat, whereof he is convicted by the ſaid Court here of our Sovereign Lord the King, for not accounting with the ſaid *Richard*, and he the ſaid *Richard* prayeth that Auditors may be aſſigned by this Court, to audit the Account of the ſaid *John*; and thereupon Auditors are aſſigned by this Court, (*to wit*) *R. C.* Gent. and *R. W.* Gent. to audit the ſaid Account of the ſaid *John*; which ſaid Auditors appointed a Day, (*to wit*) the Twentieth Day of *November*, this Inſtant Term, at the Office of *John Cooke*, Eſq; Chief Prothonotary of this Court, in the *Inner Temple*, *London*, for the ſaid *John Clarke* to account with the ſaid *Richard Pierce*; And thereupon one *Nicholas Downing*, of the *Inner Temple*, *London*, Gent. and *John Harris*, of *Clements-Inn* in the County of *Middleſex*, Gent. came here in Court in their proper Perſons, and they and each of them become Bail for the ſaid *John Clarke* in the Sum of Thirty Pounds; and the aforeſaid *John Clarke* doth undertake, under the Penalty of Sixty Pounds, that he the ſaid *John Clarke* ſhall appear before the ſaid Auditors, at the Office of the ſaid Chief Prothonotary, on the ſaid Twentieth Day of *November*, above appointed, and ſo from

Auditors aſſigned.

Day to Day till the ſame Account ſhall be finiſhed; and alſo that the ſaid *John Clarke* ſhall appear before the Juſtices here at ſuch a Day as the ſaid Auditors ſhall deliver in the ſaid Account, and ſo every Day from Day to Day until the ſame Account ſhall be determined, and Judgment thereupon ſhall be given, and ſhall render himſelf to the Priſon of the *Fleet*, there to abide until he ſhall make Satisfaction to the ſaid *Richard* for the Arrearages of ſuch Account found againſt him, if Judgment ſhould be given againſt him; which ſaid Sum of Thirty Pounds they the ſaid *Nicholas Downing* and *John Harris*, and every of them, agree ſhall be levied on their Goods and Chattels, and which ſaid Sum of Sixty Pounds the ſaid *John Clarke* acknowledged ſhall be levied on his Goods and Chattels, to the Uſe of the ſaid *Richard Pierce*, if it ſhall happen that he the ſaid *John* ſhall at any Day make Default, or if Judgment ſhall be given againſt him, he ſhall not render his Body to the Priſon aforeſaid, to ſtay there until he ſhall have made Satisfaction to the ſaid *Richard* for the Arrearages ſo found againſt him; And it is directed to the ſame Auditors, that they have the Account of the ſaid *John Clarke* taken before them of the Premiſſes before the Juſtices of our Sovereign Lord the King here, from the Day of St. *Martin* in Fifteen Days; at which Day here came as well the ſaid *R. P.* by his ſaid Attorney, as the ſaid *John Clarke* in his proper Perſon, and the ſaid Auditors in their proper Perſons likewiſe came here into this Court, and delivered the Account of the ſaid *John Clarke*, taken of the Premiſſes before them, the Tenor of which followeth in theſe Words: *The Account of* John Clarke, *taken at the Office of* John Cooke, *Eſq; Chief Prothonotary of the Court of Common Bench, in the* Inner-Temple, London, *on the Twelfth Day of* November, *in the Eleventh Year of the Reign of our ſaid Sovereign Lord the now King, before* Richard Cooke, *Gent. and* Robert Waring, *Gent. Auditors aſſigned to audit the Account of the ſaid* John Clarke, *for the Time that he was Bailiff to the ſaid* R. P. *of divers Buſhels of Wheat, to make Merchandize and Profit thereof for the ſaid* Richard, *the ſaid* Richard *being preſent at the taking the ſaid Account.*

Account how he had diſpoſed of the Goods, &c.

Imprimis: The ſaid *John Clarke* doth confeſs and ſay, that he received at ſeveral Times from the ſaid *Richard*, at the Pariſh of *Boſham* aforeſaid, in the County of *Suſſex*, One Hundred and Twenty Buſhels of Wheat, light bad Weight, and no more, to make Merchandize and Profit thereof for the ſaid *Richard*, and that after the Receipt thereof, he the ſaid *John*, for making the ſaid Wheat ſaleable, and to cauſe the ſame to be of a juſt Weight, at the ſpecial Inſtance of the ſaid *Richard*, then and there added Ten Buſhels of the beſt Wheat of the ſaid *John* to the ſaid One Hundred and Twenty Buſhels of Wheat of the ſaid *Richard*, and mingled it with the ſame, and ground them together, and cauſed the Flower ariſing from the ſame afterwards to be carried and tranſported from the Pariſh of *Boſham* aforeſaid to the Town of *Portſmouth*, in the County of *Southampton*, and there ſold the ſame for Eighteen Pounds of lawful Money of *England*; which ſaid Eighteen Pounds the ſaid *John* there received and had; and the ſaid Sale was made and tranſacted in Manner following, (*to wit*) the ſaid *John* the Tenth of *June*, in the Seventh Year of the Reign of our Sovereign Lord the King that now is, for neceſſary Sale thereof, cauſed to be carried and tranſported by

Sea in a certain Ship from the Pariſh of *Boſham* aforeſaid to the Town of *Portſmouth*, in the County of *Southampton* aforeſaid, Forty Buſhels, Parcel of the ſaid Flower, and ſold the ſame for Six Pounds, Parcel of the ſaid Eighteen Pounds; and afterwards, (*to wit*) the Tenth of *July*, in the Seventh Year aforeſaid, the ſaid *John*, for the neceſſary Sale thereof, cauſed other Forty Buſhels, Parcel of the ſaid Flower, to be carried and tranſported from the Pariſh of *Boſham* aforeſaid to the ſaid Town of *Portſmouth*, and ſold the ſame for Six Pounds, other Part of the ſaid Eighteen Pounds; and afterwards, (*to wit*) the Tenth Day of *Auguſt*, in the Seventh Year aforeſaid, he the ſaid *John* cauſed to be carried and tranſported from the Pariſh of *Boſham* aforeſaid, to *Portſmouth* aforeſaid, Fifty other Buſhels of Flour, Reſidue of the whole Flour of the One Hundred and Twenty Buſhels of the Wheat of the ſaid *Richard*, and Ten Buſhels of the Wheat of the ſaid *John*, ground and mixed together as aforeſaid, and ſold the ſame at *Portſmouth* aforeſaid for Six Pounds, Reſidue of the Eighteen Pounds aforeſaid, and charged himſelf therewith; and the ſaid *John* alledgeth and ſaith, that after the ſeveral Sales aforeſaid, by him made as aforeſaid, (*to wit*) the Tenth Day of *September*, in the Seventh Year aforeſaid, at *Boſham* aforeſaid, he the ſaid *John* paid to the ſaid *Richard* Ten Pounds of lawful Money of *England*, on Account of the ſaid One Hundred and Twenty Buſhels of Wheat, received as aforeſaid, and prayeth an Allowance thereof to be made to him; and the ſaid *John* prayeth further to be allowed to him for the ſeveral ſubſequent Matters and Sums, and alſo for the Surpluſage as followeth, that is to ſay, *Imprimis*, for new winnowing, ſifting, and cleanſing the firſt two Loads, Two Shillings and Six-pence. *Item*, for grinding the ſame the Toll came to Seven Shillings and Six-pence. *Item*, for Carriage from the Mill to the Key, One Shilling and Six-pence. *Item*, for Sea-Carriage to *Portſmouth*, and Tonnage, Eight Shillings. *Item*, for Landing at *Portſmouth*, and Carriage to the Baker's Houſe there, Three Shillings. *Item*, for a Certificate from the Cuſtom-houſe at *Chicheſter*, Three Shillings. *Item*, for Allowance of that Certificate at *Portſmouth* One Shilling and Four-pence; for the Uſe of the Sacks, and bringing them back, Two Shillings and Six-pence. *Item*, to the Baker's Man for ſhooting the Meal Six-pence. *Item*, for the Defendant's Journey to *Portſmouth* to ſell that Load of Meal Ten Shillings. *Item*, for the Defendant's Charges at another Day going to *Portſmouth* for the Money for the Meal Five Shillings. *Item*, to like Charges on the Second Load, Two Pounds Four Shillings and Ten-pence. *Item*, the like Charges for the Third Load, Two Pounds Four Shillings and Ten-pence. *Item*, for the Defendant's Salary upon the Whole One Pound. *Item*, for Ten Buſhels of the Defendant's beſt Wheat, put to the Plaintiff's bad light Wheat to make Weight and Meaſure, Two Pounds. *Item*, paid to the Plaintiff by the Defendant in Money Ten Pounds. Total, Nineteen Pounds Fourteen Shillings and Six-pence. Remains due to the Defendant in Surplus of the ſaid Account, One Pound Fourteen Shillings and Six-pence.

N. Bond.

Demurrer.

And the aforeſaid *Richard Peirce* ſaith that the Plea of the ſaid *John Clarke* above pleaded in his Diſcharge, is not ſufficient in Law to diſcharge the ſaid *John Clarke* from the Premiſſes, and that he is under no Neceſſity, or any wiſe bound by the Law of the Land, to anſwer thereto: And this he is ready to verify; wherefore, for want of a ſufficient Plea in this Cauſe, the ſaid *Richard* prayeth Judgment, and that the ſaid *John* may be charged with the One Hundred and Thirty-two Buſhels of Wheat, mentioned in the aforeſaid Declaration, *and ſo forth*.

A Joinder in Demurrer.

And Judgment was given by the Court, That the Plaintiff ought to recover what he had declared for; and one of the Reaſons was this, That the Defendant had given in his Account in *Engliſh*; the ſecond Reaſon was, That the Defendant had pleaded that he had fully accounted, and confeſſed the Receipt of all the One Hundred and Thirty-two Buſhels, and in his Account before the Auditors he makes mention of only One Hundred and Twenty Buſhels.

Dighton and others againſt Whiting.

Hill. 6 *W.* 3.

Account by ſome of the Plaintiffs, in their own Right, and by one of 'em as Executrix againſt the Defendant as Bailiff.

City of *Briſtol* (*to wit*): *Joſhua Whiting*, late of the City of *Briſtol*, Merchant, was ſummoned to anſwer to *George Dighton*, *John Jones*, *Robert Bound*, *Thomas Hicks*, *John Love*, *Henry Davis*, *George Maſon*, Merchants, and *Mary King*, Widow, Executrix of the Will of *Nathaniel King*, Merchant, her late Huſband, deceaſed, of a Plea that he ſhould render to them his reaſonable Account for the Time in which he was Bailiff to the ſaid *G. D. J. J. R. T. J. L. H. G. M.* and the ſaid *N.* in his Life-time, in the City of *Briſtol*, in the County of the ſame City; and thereupon the ſame *G. D. J. J. R. T. J. L. H. G. M.* and *N.* by *Francis Oldfield* their Attorney, ſay, That whereas the aforeſaid *Joſ.* had been a Bailiff to the ſaid *G. D. J. J. R. T. J. L. H. G. M.* and the ſaid *N.* in his Life-time, (*to wit*) at the City of *Briſtol* aforeſaid, in the Pariſh of *All Saints*, in the County of the ſame City, from the Twenty-third Day of *December*, in the Firſt Year of the Reign of their late Majeſties *William* and *Mary*, late King and Queen of *England*, until the Twenty-ninth of *January*, in the Second Year of the Reign of the ſame King and Queen, and for all that Time had the Care and Management of divers Goods and Merchandizes of the ſaid *G. D. J. J. R. T. J. L. H. G. M.* and the ſaid *N.* now deceaſed, (*to wit*) Fifty-three Ells of *Dutch* Dowlaſs, (*and ſo of divers other Goods, here mentioning the Contents thereof*) to merchandize and make Profit thereof for the ſaid *G. D. J. J. R. T. J. L. H. G. M.* and *N.* and to give a reaſonable Account thereof to the ſaid *G. D. J. J. R. T. J. L. H. G. M.* and the aforeſaid *N.* in his Life-time, whenever he ſhould be thereto requeſted; notwithſtanding the aforeſaid *Joſ.* altho' often requeſted, hath not given a reaſonable Account, as aforeſaid, to the ſaid *G. D. J. J. R. T. J. L. H. G. M.* and *N.* in his Life-time, or either of them, or to the ſaid *G. D. J. J. R. T. J. L. H. G. M.* and *N.* after the Death of the ſaid *N.* or to either of them, but altogether refuſed to render ſuch Account to the ſaid *G. D. J. J. R. T.*

The Goods with which the Defendant is charged.

L. H.

Letters Teſtamentary produced by Plaintiff as Executrix.

L. H. G. M. and *N.* in the Life of the ſaid *N.* or either of them, and to the ſaid *G. D. J. J. R. T. L. H. G. M.* and *M. K.* doth now refuſe ſo to do; wherefore they ſay that they are render'd worſe in their Circumſtances, and have ſuſtained Damage to the Value of One Thouſand Pounds, and therefore brought their Suit, *and ſo forth*: And the aforeſaid *Mary* bringeth here into Court the Letters Teſtamentary of the ſaid *N.* by which it ſufficiently may appear the ſaid *Mary* to be Executrix of the Teſtament of the ſaid *N.* and thereof to have Adminiſtration, *and ſo forth*.

An Account by one Church-warden againſt another.

Devon' (*to wit*): *A. B.* late of *S.* in the County aforeſaid, Yeoman, late Church-warden of the Pariſh Church of *S.* aforeſaid, was ſummoned to anſwer to *C. D.* and *E. F.* now Church-wardens of the ſaid Pariſh Church of *S.* of a Plea that he render to them his reaſonable Account for and during the Time that he was Church-warden of the ſaid Pariſh Church of *S.* and Receiver of the Monies and Goods of and belonging to the ſame Church, *and ſo forth*; and whereupon the ſaid *C. D.* and *E. F.* by *J. M.* their Attorney, ſay, That whereas the ſaid *A. B.* was Church-warden of the Pariſh Church aforeſaid, from the Feaſt of *Eaſter*, (*in ſuch a Year*) until the Feaſt of *Eaſter* then next following, and during that Time, had the Care and Management of the Goods and Parochial Ornaments of the ſame Church, and was Receiver of the Goods and Monies of and belonging to the Pariſh Church aforeſaid, and during that Time had and received of the Monies of and belonging to the ſaid Pariſh Church, by the Hands of, (*naming the ſeveral Pariſhioners of which he had received Monies*) and of the Goods of that Church, (*naming them*) by the Hands of, (*naming the former Church-wardens of whom he had received Goods*) late Church-wardens of the ſaid Pariſh Church, to render an Account thereof to the ſaid *C. D.* and *E. F.* his Succeſſors, Church-wardens of the ſaid Pariſh Church; nevertheleſs the ſaid *A. B.* altho' often thereto required, hath not yet rendered his reaſonable Account of the Time, Monies and Goods to the ſaid *C. D.* and *E. F.* now Church-wardens of the ſaid Pariſh Church of *S.* but hath hitherto, and doth even now, refuſe ſo to do; wherefore the ſaid *C. D.* and *E. F.* ſay, That they as Church-wardens of the ſaid Pariſh Church of *S.* are rendered worſe in their Circumſtances, and have ſuſtained Damage to the Value of Five Hundred Pounds; and thereupon they bring this Suit, *and ſo forth*.

An Account for Monies received by the Hands of divers Perſons.

R. S. late of *Southmolton* in the County of *Devon*, Carrier, was ſummoned to anſwer to *A. B.* of a Plea that he rendered to him a reaſonable Account for the Time he was Receiver of the Monies of him the ſaid *A. B. and ſo forth*; and thereupon the ſame *A. B.* by *R. M.* his Attorney, ſaith, That whereas the aforeſaid *R. S.* had been Receiver of the Monies of him the ſaid *A. B.* from the Tenth Day of *March*, in the Fourth Year of the Reign of his preſent Majeſty, to the Tenth Day of *March* then next following, during which Time he the ſaid *R. S.* had received of the Monies of the ſaid *A. B.* at *Southmolton* aforeſaid, in the County aforeſaid, Sixty-ſix Pounds, by the Hands of *Solomon Aſhley*, and by the Hands of *William Aſhurſt* Forty-ſix Pounds, and by the Hands of *William Poole* Thirty-ſix Pounds, in the Whole amounting to the Sum of One Hundred and

Forty-eight Pounds, to render a reaſonable Account thereof to the ſaid *A. B.* when he ſhould be thereto requeſted; nevertheleſs the aforeſaid *J.* altho' often requeſted, hath not as yet rendered ſuch reaſonable Account to the ſaid *A. B.* but hitherto hath, and ſtill doth, refuſe ſo to do; wherefore the ſaid *C.* ſaith he is thereby injur'd, and hath ſuſtained Damages to the Value of Two Hundred Pounds: And therefore he brings this Suit, *and ſo forth.*

Againſt Bailiff and Receiver having the Care and Management of diverſe Quantities of Sea-Coals.

Newcaſtle upon Tine (*to wit*): *A. B.* complaineth of *R. D.* in the Cuſtody of the Marſhal, *and ſo forth*, of a Plea, that he ſhould render to him his reaſonable Account for the Time that he was Bailiff to *J.* in his Life-time, in the Vill of *Newcaſtle upon Tine*, and Receiver of the Money of the ſaid *J.* for that whereas the aforeſaid *William* had been Bailiff to the ſaid *J.* in the ſaid Vill of *Newcaſtle upon Tine* in the County of the ſame Vill, the 20th Day of *April*, in the Year of our Lord One Thouſand Seven Hundred Thirty-two, at the Place aforeſaid, for one whole Year then next following, and during all that Time had the Care and Management of divers Quantities of Sea-Coals of the ſaid *J.* and had received of Money of the ſaid *J.* to the Amount of Three Thouſand Pounds of lawful Money of *Great Britain*, with his own Hands to make Merchandize and Profit thereof, for, and to render a reaſonable Account to the ſaid *J.* of the ſame, whenever he ſhould be thereto requeſted, at *Newcaſtle upon Tine* aforeſaid; nevertheleſs, the ſaid *R.* altho' often requeſted, hath not hitherto render'd a reaſonable Account to the ſaid *George* thereof, but hath hitherto, and doth now refuſe ſo to do, to the Damage of the ſaid *J.* Four Thouſand Pounds: And therefore he brought his Suit, *and ſo forth.*

Againſt a Bailiff and Receiver having the Care and Management of all the Lands, and Tenements, Rents, Profits, Eſtate, &c. of Plaintiff, as well as Perſonal.

Suffolk (*to wit*): *George Bond*, Eſq; complaineth of *W. A.* in the Cuſtody of the Marſhal, *and ſo forth*, of a Plea, that he ſhould render to him his reaſonable Account for the Time that he was Bailiff to the ſaid G. at *A.* in the County aforeſaid, and there Receiver of the Money of the ſaid G. For that whereas the ſaid *W.* the Firſt of *October*, in the Firſt Year of the Reign of our Sovereign Lord *George* the Second, King of *Great Britain*, *and ſo forth*, until the firſt of *May* the Sixth Year of his Reign, at *A.* aforeſaid, had been Bailiff of the ſaid G. of the Manors of *H. J.* and *K.* and ten Meſſuages, *and ſo forth, here naming the reſt of the Lands*, and during all that Time had the Care and Management of the Horſes, &c. *here naming the reſt of the Cattle, or other Goods or Chattels of the Plaintiff*, to make Merchandize and Profit thereof, for the ſaid G. and to render to the ſaid *George* a reaſonable Account of the ſame: And during the Time aforeſaid, that the ſaid *W.* had been Bailiff to the ſaid G. at *A.* aforeſaid, in the County aforeſaid, he the ſaid *William*, at *A.* aforeſaid, receiv'd of the Money of the ſaid G. Ten Thouſand Pounds, by the Hands of *R. S.* to make Merchandize and Profit thereof, for, and to render to the ſaid *George* a reaſonable Account thereof, whenever he ſhould be thereto requeſted; nevertheleſs, the ſaid *W.* tho' often thereto requeſted, hath not render'd a reaſonable Account thereof to the aforeſaid *George*, but hath altogether hitherto refuſed, and yet doth refuſe ſo to do, to the Damage of the ſaid *George* Twenty Thouſand Pounds: And therefore he brings this Suit, *and ſo forth.*

An Account againſt a Bailiff of an Office and Receiver of Monies.

Devon (to wit): *A. B.* was ſummon'd to anſwer to *C. D*, of a Plea, that he render to him his reaſonable Account for the Time that he was his Bailiff in *E.* and Receiver of the Monies of the ſaid *C. and ſo forth*, and therefore the ſaid *C.* by *John Cock* his Attorney, complains, That whereas the ſaid *A.* was Bailiff to the ſaid *C.* of his Office of the Conſtable of the Caſtle of *D.* in the aforeſaid County of *Devon*, from (*ſuch a Day*) until (*ſuch a Day and Year*) during all which Time, the ſaid *A.* had the Care and Management of the ſaid Office, and of all and ſingular the Iſſues and Profits belonging to and ariſing from the ſame Office, as thereby having the Cuſtody of all the Foreſts, Parks, Warrens, and other Places appertaining to the ſaid Office, to make Profit thereof for the Benefit of the ſaid *C.* And alſo during the Time aforeſaid, the ſaid *A.* had received of the Monies of him the ſaid *C.* by the Hands of one *G. O.* at *D.* One Hundred Pounds, to Merchandize, and make Profit thereof, for him the ſaid *C.* and to render a reaſonable Account to the ſaid *C.* of the ſaid Iſſues, Profits, and Monies for the Time aforeſaid, when he ſhould be thereunto required; nevertheleſs, the ſaid *A.* although often required, hath not yet render'd his ſaid reaſonable Account to the ſaid *C.* of the Premiſſes, but hitherto hath, and ſtill doth refuſe ſo to do; wherefore the ſaid *C.* ſaith, that he is thereby injured, and hath ſuſtain'd Damages to the Value of One Thouſand Pounds: And therefore he brings this Suit, *and ſo forth.*

An Account as Bailiff and Receiver of Monies.

Norfolk (to wit): *A. B.* late of, *and ſo forth*, was ſummon'd to anſwer to *C. D.* and *E. F.* of a Plea, that he render to them his reaſonable Account for the Time that he was Bailiff to them the ſaid *C.* and *E.* at *C.* in the ſaid County, and there likewiſe Receiver of the Monies of the ſame *C.* and *E. and ſo forth*; and thereupon the ſaid *C.* and *E.* by *H.* and *J.* (*who are admitted by the Court here to proſecute for the ſame* C. *and* E. *who are within Age, as the next Friends to them the ſaid* C. *and* E.) ſay, that whereas the aforeſaid *B.* was Bailiff to them the ſaid *C.* and *E.* of one Meſſuage, Thirty Acres of Land, *and ſo forth*, with the Appurtenances in *A.* aforeſaid, from the Five and Twentieth Day of *May*, in the Firſt Year of His preſent Majeſty *George* the Second, King of *Great Britain, and ſo forth*, to the Five and Twentieth Day of *March*, in the Fifth Year of His ſaid Majeſty's Reign, and during all that Time had the Care and Management thereof, and ſufficient Power to improve let and demiſe the Tenements aforeſaid, with the Appurtenances, and to collect and receive the Rents, Iſſues and Profits of all the ſaid Premiſſes to the Uſe of them the ſaid *C.* and *E.* aforeſaid, for the Benefit of the ſaid *C.* and *E.* and was, and during all that Time had been Receiver of the Monies of them the ſaid *C.* and *E.* and as ſuch had received of the Monies of them the ſaid *C.* and *E.* at *A.* aforeſaid, by the Hands of *R. W.* One Hundred Pounds, and by the Hands of *T. M.* Six Pounds, to render his reaſonable Account thereof to the ſame *C.* and *E.* when he ſhould have been thereunto required; nevertheleſs, the aforeſaid *B.* altho' often required, hath not render'd ſuch his reaſonable Account thereof to the ſame *C.* and *E.* or either of them, or to any other Perſon on their Behalf, but always hitherto hath, and now doth refuſe ſo to do; wherefore they the ſaid *C.* and *E.* by the ſaid *H.* and *J.* their neareſt Friends ſay, that they are thereby injured, and have ſuſtain'd

Damages to the Value of Ten Pounds: And therefore they bring this Suit, *and ſo forth.*

And the ſaid *A.* by *T. H.* his Attorney, comes and defends the Charge of the Force and Injury, and the Damages, and whatever elſe he ought to defend, where and when this Court will pleaſe to take the ſame into Conſideration: And as to that, that the ſaid *C.* and *E.* do ſuppoſe him the ſaid *J.* to have been a Bailiff to them the ſaid *C.* and *E.* of the Tenements aforeſaid, with the Appurtenances in *G.* aforeſaid, and thereof to have had the Care, Management, and Power to improve and demiſe the ſaid Tenements aforeſaid, with the Appurtenances, and to collect and receive the Rents, Iſſues, and Profits of the ſame, to the Uſe of the aforeſaid *C.* and *E.* the ſaid *B.* ſaith, that he never was Bailiff to the ſaid *C.* and *E.* of the Tenements aforeſaid, or of any Parcel thereof, to render an Account thereof to the ſame *C.* and *E.* when he ſhould be thereunto required, as the aforeſaid *C.* and *E.* have for that Purpoſe above declared; *and of this he puts himſelf upon his Country*, and the ſaid *C.* and *E.* *likewiſe do the ſame*: And as to that, that the aforeſaid *C.* and *E.* do ſuppoſe him the ſaid *J.* to have been the Receiver to the ſaid *C.* and *E.* of One Hundred Pounds, by the Hands of *R. W.* and of the aforeſaid Six Pounds, by the Hands of the aforeſaid *T. M.* the ſame *J.* thereto ſaith, That he never was a Receiver to the ſaid *C.* and *E.* of the Monies aforeſaid, or of any Parcel thereof, by the Hands of the aforeſaid *R. W.* and *T. M.* or either of them, to render an Account thereof to the ſame *C.* and *E.* when he ſhould have been thereunto required, as the aforeſaid *C.* and *E.* have above declared; *and of this likewiſe he puts himſelf upon his Country*; and the aforeſaid *C.* and *E.* *do likewiſe the ſame*; therefore, to try as well this as the other Iſſue above join'd, between the Parties aforeſaid, the Sheriff of *Devon* is commanded, that he cauſe to come here ſuch a Day, *and ſo forth.*

An Account againſt a Bailiff of a Hundred.

Devon (to wit): *S. A.* complaineth of *J. M.* in the Cuſtody of the Marſhal of the King's *Marſhalſey*, preſent before His Majeſty, of a Plea, That he render to him his reaſonable Account from the Time that he firſt began to be Bailiff to the ſaid *S.* of his Liberty and Franchiſe of his Hundred of *C.* and alſo of the Manors, Lands and Tenements of him the ſaid *S.* of *B. R.* and *H.* *and ſo forth*, For this Cauſe, That is to ſay; That whereas the ſaid *J.* hath been Bailiff to him the ſaid *A.* of his Liberty and Franchiſe of the Hundred of *C.* and likewiſe of the Mannors of him the ſaid *S.* of *B. R.* and *H.* and of the Lands and Tenements (*that is to ſay*) of Twenty Meſſuages, *and ſo forth*, with the Appurtenances in *B. H.* and *R.* aforeſaid, (*from ſuch a Day until ſuch a Day*) and during all that Time had the Care and Management of the Execution and Return of all and all manner of Writs, Warrants and Precepts, and had the Receipt of all Fees, Advantages, and Profits, by reaſon of the Execution and Return of the ſaid Writs, Warrants and Precepts, within the aforeſaid Manors, Lands and Tenements, and within every Parcel thereof, and alſo the receiving and collecting of all Fines, Redemptions, Iſſues, Forfeitures, Amercements, and for the Licenſe of Fines and Concords, and likewiſe of all manner of Goods and Chattels of Felons, Fugitives, Outlawries, Actions, Condemnations, and Attaints, and of all Convictions either put in Exigent for Felony or Treaſon; and alſo of the Chattels of Felons themſelves, and of all Deodands, Wrecks of the Sea, Treaſure found, and of all other Goods and Chattels which are called Waifes and Strays, and alſo of all Profits of Fines and Amercements, Evaſions and Eſcapes of all and ſingular Felons and Priſoners, from what Priſon ſoever happening and ariſing within the aforeſaid Hundred, and the Manors, Lands, and Tenements, with the Appurtenances, to the Uſe of him the ſaid *A.* and to make Advantage and Profit thereof and to render a reaſonable Account thereof to him the ſaid *A.* whenever he ſhould be thereto required; nevertheleſs the ſaid Defendant, altho' often requeſted, hath not render'd ſuch reaſonable Account, but always hitherto hath, and yet doth refuſe ſo to do; and therefore the ſaid *S.* ſaith, that he is thereby injured and hath ſuſtained Damage to the Value of Three Hundred Pounds; and therefore brings this Suit, *and ſo forth.*

Turner againſt **Turner.**

Paſ. 13 *W.* 3.

Lilly 13. 1 Vent. 105. 1 Salk. 9.

Devon (to wit): *Charles Turner*, Gent. complaineth of *John Turner*, Gent. in Cuſtody of the Marſhal, *and ſo forth*, of a Plea, that he render to him his reaſonable Account for the Time he was Bailiff, to him the ſaid *Charles* at *Swanwicke*, in the Pariſh of *Alfreton*, in the County aforeſaid, For this Cauſe (that is to ſay) that whereas it was provided by the Common Council in the Reign of his late Majeſty, King of *England*, that the Guardian of Lands and Tenements held in Socage, when the Heir ſhould come to his full Age, ſhould render his reaſonable Account of the Iſſues and Profits of the Lands and Tenements, for the Time he ſhould ſo have the Cuſtody of the ſaid Lands and Tenements, by reaſon of the Minority of ſuch Heir. And altho' the ſaid *John* had the Cuſtody of the Lands and Tenements of him the ſaid *Charles* (to wit) of Two Meſſuages, Three Cottages, Five Gardens, and Eighty Acres of Land, Thirty Acres of Meadow, Eighty Acres of Paſture, and Thirty Acres of Wood, with the Appurtenances, in *Swanwick* aforeſaid, in the Pariſh of *Alfreton* aforeſaid, in the ſaid County, from the Sixth Day of *January*, in the Year of our Lord One Thouſand Six Hundred Eighty-four, until the Twentieth Day of *July*, in the Year of our Lord One Thouſand Six Hundred Ninety-one, (the ſame *Charles* during all that Time being within the Age of Fourteen Years) and during all that Time the ſaid *John* receiv'd the Iſſues and Profits of the ſaid Meſſuages and Tenements; nevertheleſs, the ſaid *John*, tho' often requeſted, *and ſo forth*, hath not render'd ſuch Account to the ſaid *Charles*; but on the contrary always hitherto hath, and now doth refuſe to render the ſame. And whereas alſo the ſaid *John* (to wit) the Twentieth Day of *July*, in the Firſt Year of the Reign of his preſent Majeſty, at *Swanwicke* aforeſaid, in the Pariſh of *Alfreton* aforeſaid, in the County aforeſaid, was Bailiff to the ſaid *Charles* of the Two Meſſuages, Three Cottages, Five Gardens, and Eighty Acres of Land, Three Acres of Meadow, Eighty Acres of Paſture, and Thirty

Acres of Wood, with the Appurtenances in *S.* aforeſaid, in the Pariſh and County aforeſaid, from the ſaid Twentieth Day of *July*, in the ſaid Firſt Year of the Reign of his preſent Majeſty, 'till the Seventh Day of *October*, in the Fifth Year of his ſaid Majeſty's Reign, and during all that Time had and received the Annual Profits thereof, to render to the ſaid *Charles* his reaſonable Account thereof, when he ſhould be thereto requeſted; nevertheleſs, the ſaid *John*, altho' often requeſted, *and ſo forth*, hath not yet render'd ſuch reaſonable Account to the ſaid *Charles*, but hath hitherto, and ſtill doth refuſe ſo to do, to the Damage of him the ſaid *Charles* One Thouſand Five Hundred Pounds: And therefore he brings this Suit, *and ſo forth.*

Pleas before our Sovereign Lady the Queen, of Trinity *Term, in the Seventh Year of the Reign of her ſaid preſent Majeſty the Lady* Anne, *Queen of* Great Britain, and ſo forth.

The Memorandum.

London (to wit): **Be it remembred**, that lately (that is to ſay) in *Eaſter* Term laſt paſt came before our Sovereign Lady the Queen at *Weſtminſter*, *Joſeph Biſhop* and *John Andrews*, the preſent Church-wardens of the Pariſh of St. *Bartholomew the Leſs*, near the *Royal Exchange*, *London*, and brought here into this Court, then held there, their Bill againſt *John Eagle* and *Daniel Franklyn*, the late Church-wardens of the ſame Pariſh Church, in the Cuſtody of the Marſhal of the *Marſhalſey* of our ſaid Sovereign Lady the Queen, preſent before her ſaid Majeſty, of a Plea of Account; and there are Pledges of proſecuting, (that is to ſay) *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words, (that is to ſay)

The Declaration in Account by the preſent Church-Wardens againſt the then late Church-Wardens.

London, (to wit): *Joſeph Biſhop* and *John Andrews*, the preſent Church-wardens of the Pariſh Church of St. *Bartholomew the Leſs*, near the *Royal Exchange*, *London*, complain againſt *John Eagle* and *Daniel Franklyn*, late Church-wardens of the ſame Pariſh Church, in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lady the Queen, (preſent before her ſaid Majeſty) of a Plea that they ſhould render to the ſame *Joſeph Biſhop* and *John Andrews*, the preſent Church-wardens of the Pariſh Church aforeſaid, a reaſonable Account for the Time in which they the ſaid *J. E.* and *D. F.* were Church-wardens of the Pariſh Church aforeſaid, and Receivers of the Money, Goods and Chattels of the Pariſhioners of the Parochial Church of the Pariſh of St. *Bartholomew the Leſs*, near the *Royal Exchange*; *By Reaſon*, That whereas the ſaid *John Eagle* and *Daniel Franklyn*, were Church-wardens of the aforeſaid Church, at *London* aforeſaid, in the Pariſh aforeſaid, in the Ward of *Breadſtreet*, from the Feaſt of *Eaſter*, in the Year of our Lord One Thouſand Seven Hundred and Six, until the Feaſt of *Eaſter* One Thouſand Seven Hundred and Eight, during which Time, by Virtue of their ſaid Office, they had the Care and Management of the Parochial Goods and Chattels of the Pariſhioners of the ſaid Pariſh Church; and the ſame *J. E.* and *D. F.* received divers Sums of Money hereafter mentioned, to the Uſe of the Pariſhioners of the Church aforeſaid, paid to them by the Hands of divers Perſons hereafter named, to render an Account for the ſame, (*to wit*) by the Hands of *William Whitehead* Twenty-one Pounds Six Shillings and Six-pence; by the Hands of Mr. *Evans* Six Pounds Ten Shillings; by the Hands of *John Andrews* Seven Pounds Sixteen Shillings and Eight-pence; by the Hands of *John Chaſe* Fifty-ſix Pounds; and as Church-wardens of the Pariſh Church aforeſaid, received by the Hands of *William Whitehead*, late Church-warden of the ſame Church, two Surplices ---- (and ſo mention the Goods,) *and ſo forth*, to render a reaſonable Account thereof to the Pariſhioners of the ſaid Pariſh Church: And afterwards (*to wit*) the Fifth Day of *April* One Thouſand Seven Hundred and eight, the ſaid *J. E.* and *D. F.* were removed from their Office of Church-wardens aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid; and the aforeſaid *J. B.* and *J. A.* now Plaintiffs, afterwards (*to wit*) the ſame Fifth Day of *April*, in the Year laſt aboveſaid, at *London* aforeſaid, at the Pariſh and Ward aforeſaid, were duly elected and appointed into the ſaid Office of Church-wardens of the ſaid Pariſh Church, by the Pariſhioners of the ſaid Church, and are now Church-wardens of the ſame: *Nevertheleſs* the ſaid *J. E.* and *D. F.* altho' often requeſted, have not yet render'd their Account of the aforeſaid Money and Goods to the ſame *J.* and *J. A.* but hitherto have, and ſtill do refuſe to render ſuch Account to the ſaid *J.* and *J. A.* to the Damage of the Pariſhioners of the Pariſh aforeſaid Two Thouſand Pounds: And therefore they bring their Suit, *and ſo forth*.

Imparlance.

And now here at this Day, (*to wit*) on *Friday* next after the Morrow of the *Holy Trinity*, this ſame Term, (till which Day the ſaid *J. E.* and *D. F.* had Leave to imparle to the ſaid Bill, and then to anſwer, *and ſo forth*,) before our Sovereign Lady the Queen at *Weſtminſter*, came as well the ſaid *Joſeph Biſhop* and *John Andrews*, by their ſaid Attorney, as the ſaid *J.* and *D. F.* by *J. F.* Gent. their Attorney; and the ſaid *J. E.* and *D. F.* defend themſelves againſt the Charge of the Force and Injury, and the Damages, and whatſoever elſe they ought to defend where and when this Court will pleaſe to take the ſame into Conſideration, and ſay, that the ſaid *J.* and *J. A.* ought not to have their Action aforeſaid againſt the ſaid *J. E.* and *D.* becauſe they ſay, that they the ſaid *J.* and *J. A.* never were elected and conſtituted into the Office of Church-wardens of the ſaid Pariſh Church, in Manner and Form as the ſaid *J.* and *J. A.* above for that Purpoſe have declared; and of this they put themſelves upon their Country; and the aforeſaid *J. B.* and *J. A.* do likewiſe the ſame: Therefore the Jury thereof come before our Sovereign Lady the Queen at *Weſtminſter*, on *Tueſday* next after Eight Days of the *Holy Trinity*; and who neither, *and ſo forth*, to make a Jury, *and ſo forth*, becauſe as well, *and ſo forth*, the ſame Day is given to the aforeſaid Parties there, *and ſo forth*; afterwards the Proceſs thereof being continued between the ſaid Parties of the Plea aforeſaid, by Juries thereof reſpited, before our ſaid Sovereign Lady the Queen at *Weſtminſter*, until *Saturdy* next after Three Weeks of St. *Michael*, from thence next following, unleſs her ſaid Majeſty's faithful and well-beloved Sir *John Holt*, Knight, Chief Juſtice, aſſigned to hold Pleas in her ſaid Majeſty's Court, before the ſaid Queen herſelf, before that Time, that is to ſay, on *Saturday* next after the End of the ſaid *Trinity* Term, at *Guildhall*, *London*, according to the Form of the Statute, *and ſo forth*, ſhould come by Default of Jurors, *and ſo forth*; at which Day

Plea, That they never were choſen Church-Wardens.

the ſaid *Joſeph Biſhop* and *John Andrews*, by their ſaid Attorney, come before our Sovereign Lady the Queen at *Weſtminſter*; and her ſaid Majeſty's ſaid Chief Juſtice, before whom, *and ſo forth*, ſent hither his Record taken before him, *in theſe Words:* Afterwards the Day and Year within contained before the ſaid Sir *John Holt*, Knight, her ſaid Majeſty's Chief Juſtice, aſſigned to hold Pleas in her ſaid Majeſty's Court, before the ſaid Queen herſelf, (there being aſſociated to him *John Ince*, Gent. according to the Form of the Statute, *and ſo forth*,) the within *Joſeph Biſhop* and *John Andrews*, the preſent Church-wardens of the Pariſh Church of St. *Bartholomew the Leſs*, near the *Royal Exchange*, *London*, come by their Attorney within contained, and the within written *John Eagle* and *Daniel Franklyn*, the late Church-wardens of the ſame Pariſh Church, altho' ſolemnly required, never came, but made Default; Therefore the Jury, whereof Mention is made within, may be receiv'd againſt them by their Default; and the Jurors of the ſaid Jury being required, ſome of them, that is to ſay, *Nathaniel Troughton*, *Thomas Ward*, *John Watſon*, *Brabazon Aylmer*, *Samuel Wood*, *John Nicholas*, *Alexander Cleeve*, *William Batſon*, and *John Hill*, came, and were ſworn upon that Jury, and becauſe the Reſidue of the Jurors of the ſaid Jury did not appear, therefore other Perſons of as good Circumſtances, by the Sheriffs of *London*, choſen for this Purpoſe, at the Requeſt of the ſaid *Joſeph Biſhop* and *John Andrews*, and by the Command of the ſaid Chief Juſtice, are newly appointed; the Names of which are ſet down in the Panel within written, according to the Form of the Statute in that Caſe made and provided: And the Jurors being ſo newly appointed, (that is to ſay) *William Levett*, *Iſrael Bennett*, and *Adam Bodens*, being likewiſe come (who being choſen, tryed, and ſworn, together with the other Jurors aforeſaid, having been impannelled before) to declare the Truth upon their Oaths, upon their Oaths ſay, That the ſaid *Joſeph Biſhop* and *John Andrews* (the now Plaintiffs) were duly elected and conſtituted into the Office of Church-wardens of the Pariſh within written, in Manner and Form as the ſaid *Joſeph* and *John* within have declared in that Behalf: And becauſe the Court of our ſaid Sovereign Lady the Queen now here are not yet determin'd what Judgment to give of and concerning the Premiſſes, a Day therefore is given to the ſaid *Joſeph Biſhop* and *John Andrews* to hear their Judgment thereof before our ſaid Sovereign Lady the Queen, until on *Wedneſday* next after the Morrow of *All Souls*; for that the ſaid Court of our ſaid Sovereign Lady the Queen now here are not yet, *and ſo forth*, at which Day came the ſaid *Joſeph Biſhop* and *John Andrews*, by their ſaid Attorney; whereupon, the Court having ſeen and fully underſtood all and ſingular the Premiſſes, and upon mature Deliberation thereon had, and by reaſon it appeareth that the Declaration aforeſaid of the ſaid *Joſeph Biſhop* and *John Andrews*, as to One Thouſand Pounds, ſpecify'd in the Bill of the ſaid *Joſeph Biſhop* and *John Andrews* to have been received by the Hands of the Pariſhioners of the ſaid Pariſh, and the Matters in the ſame contain'd, as to the ſaid One Thouſand Pounds, are uncertain and not ſufficient in Law to compel them the ſaid *John Eagle* and *Daniel Franklyn* to render an Account of the ſaid One Thouſand Pounds; therefore it is conſider'd, that the Bill of the ſaid *Joſeph Biſhop* and *John Andrews* aforeſaid, as to the ſaid One

The Poſtea returned upon the Back of the Record of Niſi Prius.

Jurors made Default.

Tales awarded.

Verdict, that they were choſen Church-wardens.

Judgment.

As to Part for the Defendant.

The Judgment.

Thouſand Pounds, by reaſon of the Incertainty of the ſame in that Particular, ſhall be quaſh'd, *and ſo forth,* and that the ſaid *John Eagle* and *Daniel Franklyn* ſhall be thereof diſmiſs'd. And further it is conſider'd, that as to all the Reſidue of the ſaid Sums of Money, and the Goods and Chattels in the ſame Bill mention'd to have been receiv'd by and paid to the ſaid *John Eagle* and *Daniel* by the Hands of the ſaid Pariſhioners of the ſaid Pariſh, the ſaid *John Eagle* and *Daniel Franklyn* ſhall account with the ſaid *Joſeph* and *John Andrews* for the Time that the ſaid *John Eagle* and *Daniel* had been Church-wardens of the ſaid Pariſh Church, and Receivers of the Money, Goods and Chattles of the Pariſhioners of the ſaid Pariſh Church of St. *Bartholomew the Leſs*, near the *Royal Exchange*, and ſhall render a fair Account thereof, and becauſe they had not accounted before, they are in the Mercy of this Court. And afterwards, (*that is to ſay*) on *Saturday* next after the Morrow of St. *Martin*, in the Seventh Year of the Reign of her ſaid preſent Majeſty, came as well the ſaid *Joſeph* and *John Andrews*, by their ſaid Attorney, as the ſaid *John Eagle* and *Daniel* in their proper Perſons before our ſaid Sovereign Lady the Queen at *Weſtminſter*, and the ſaid *John Eagle* and *D. F.* immediately render'd themſelves Priſoners to the Marſhal of our ſaid Sovereign Lady the Queen, attending on the ſaid Queen herſelf, who by reaſon of the Premiſſes were committed to the Cuſtody of the ſaid Marſhal, *and ſo forth*, there to remain until, *and ſo forth*. Whereupon, *Robert Stone*, and *William Simons*, Gentlemen, are aſſign'd Auditors by this her ſaid Majeſty's Court here, by the Conſent of the ſaid *Joſeph Biſhop* and *John Andrews*, to hear and take the Account of the ſaid *John Eagle* and *Daniel*, of and concerning the Premiſſes; which ſaid Auditors have appointed a Day for the ſaid Parties to bring in and finiſh their ſaid Account before the ſaid Auditors, at the Queen's Bench Office in the *Inner Temple*, *London*, (*that is to ſay*) on *Saturday* next after Fifteen Days of St. *Martin* next following, to account, *and ſo forth*; and it is directed to the ſame Auditors by the Court of her ſaid Majeſty here, that they have the ſaid Account before her ſaid Majeſty at *Weſtminſter*, on *Saturday* next after Eight Days of St. *Hillary* then next following; and thereupon came *Peter Way*, of the Pariſh of St. *Swithin*'s, *London*, Serjeant at Mace, and *Samuel Birthwright*, of the Pariſh of St. *Giles*'s *Cripplegate*, *London*, Yeoman, in their proper Perſons, and become Bail to procure the Body of the ſaid *John Eagle* before the ſaid Auditors, at the Queen's Bench Office in the *Inner Temple*, *London*, aforeſaid, on the ſaid *Saturday* next after Fifteen Days of St. *Martin*, and ſo from Day to Day on every Day that ſhall be appointed by the Auditors to hear the Matter in Variance, until the ſaid Account ſhall be taken and adjuſted before the ſaid Auditors; and to be likewiſe in this Court from Day to Day, every Day that ſhall be appointed for the ſaid *John Eagle* ſo to be, until the ſaid Account ſhall be judicially finiſh'd and determin'd; and if it ſhould happen, that the ſaid *John Eagle* ſhould be convicted in the ſaid Suit, that then they the ſaid Manucaptors, and each of them, and the ſaid *John Eagle* for himſelf grant and agree, that all and every ſuch Sums of Money, as the ſaid *John Eagle* upon the ſaid Account ſhall be found to be in Arrear to the ſaid *Joſeph Biſhop* and *John Andrews*, ſhall be made of and levy'd upon the Lands and Chattles of each and every of them, to the Uſe of the ſaid *Joſeph Biſhop* and *John Andrews*, if ſo be that the ſaid

John Eagle himſelf ſhould not pay ſuch Sum or Sums of Money to the ſaid *Joſeph Biſhop* and *John Andrews*, or render his Body to the Priſon of the *Marſhalſey* of our ſaid Sovereign Lady the Queen. And alſo *Richard Godfrey* of the *Inner Temple*, *London*, Eſquire, and *John Meriden*, of the Pariſh of St. *Michael Cornhil*, Cutler, came before our ſaid Sovereign Lady the Queen at *Weſtminſter*, and became Manucaptors to have the Body of the ſaid *Daniel Franklyn* before the ſame Auditors at the Queen's Bench Office in the *Inner Temple*, *London*, aforeſaid, on *Saturday* next after Fifteen Days of St. *Martin*, and ſo from Day to Day at every Day appointed by the ſaid Auditors, until the Account before the ſaid Auditors ſhould be adjuſted, and ſhould be likewiſe here in Court from Day to Day at every Day appointed for the ſaid *Daniel*, ſo to be, until the ſaid Account ſhould be compleated and determin'd; and if it ſhould happen the ſaid *Daniel Franklyn* ſhould be convicted in the ſaid Suit, then the ſaid Manucaptors, and every of them, and the ſaid *Daniel Franklyn* for himſelf granted and agreed that all and every the Sum and Sums of Money in which the ſaid *Daniel* ſhould upon that Account be found to be in Arrear to the ſaid *Joſeph Biſhop* and *John Andrews*, ſhould be made and levy'd of the Goods and Chattles of them, and every of them, to the Uſe of the ſaid *Joſeph Biſhop* and *John Andrews*, if ſo be that the ſaid *Daniel* ſhould not pay ſuch Sum or Sums of Money to the ſaid *Joſeph* and *John Andrews*, or render his Body to the Priſon of the *Marſhalſey* of our ſaid Sovereign Lady the Queen. And afterwards, as well the ſaid *Joſeph Biſhop* and *John Andrews*, by their ſaid Attorney, as the ſaid *John Eagle* and *Daniel Franklyn*, came in their proper Perſons. And the ſame *John Eagle* and *Daniel Franklyn* pray'd a further Day to make up and bring in their ſaid Account before the ſame Auditors at the Queen's Bench Office in the *Inner Temple*, *London*, until *Monday* next after Eight Days of St. *Hillary*, to account, *and ſo forth*, and the ſame is by the ſaid Auditors granted, *and ſo forth*. The ſame Day is given by the ſaid Auditors to the ſaid Parties there, *and ſo forth*; at which Day, on *Monday* next, after Eight Days of St. *Hillary*, as well the ſaid *Joſeph* and *John Andrews*, by their ſaid Attorney, as the ſaid *John Eagle* and *Daniel*, in their proper Perſons then and there came and pray'd a further Day to make up and perfect their ſaid Accounts of and concerning the Premiſſes before the ſaid Auditors, at the Queen's Bench Office in the *Inner Temple*, *London*, (*that is to ſay*) on *Saturday* next after Eight Days of the Purification of the bleſſed *Mary*, as well the ſaid *Joſeph Biſhop* and *John Andrews* came before our ſaid Sovereign Lady the Queen, at *Weſtminſter*, by their ſaid Attorney, as the ſaid *John Eagle* and *Daniel* in their proper Perſons, and the ſaid Auditors likewiſe came in their proper Perſons; and the ſaid Auditors brought here into this Court the ſaid Account of and concerning the Premiſſes made up before them, the Tenor of which followeth in theſe Words (*to wit*): The Account of *John Eagle* and *Daniel Franklyn* made on *Saturday* next after Eight Days of the Purification of the Bleſſed Virgin *Mary*, being the Twelfth Day of *February*, in the Seventh Year of the Reign of our Sovereign Lady the Queen of *Great Britain*, *and ſo forth*, at the Queen's Bench Office in the *Inner Temple*, *London*, before *Robert Stone*, Gentleman, and *William Simons*, Gentleman, Auditors, aſſign'd ſign'd by the Court to hear and take the Account of the ſaid *John Eagle* and *Daniel Franklyn*, before our Sovereign Lady the Queen at *Weſtminſter*, in the County of *Middleſex*, of ſeveral Sums of Money, in the whole amounting to Two Hundred Thirty-four Pounds, and of diverſe Goods and Chattles: And foraſmuch as the ſaid *John Eagle* and *Daniel Franklyn* are appointed to account for the Time they were Church-wardens of the ſaid Pariſh of St. *Bartholomew the Leſs*, near the *Royal Exchange*, *London*, and therefore they render here the following Account, and pray to be allow'd, and to be from thence diſcharg'd, for this Reaſon, That being Church-wardens of the ſaid Pariſh of St. *Bartholomew the Leſs*, they the ſaid *John Eagle* and *Daniel Franklyn*, the Seventeenth Day of *May*, One Thouſand Seven Hundred and Six, at the Pariſh aforeſaid, paid for the neceſſary maintaining and taking Care of the Poor to be maintain'd and taken Care of by the ſaid Pariſh, and allow'd, and to be allow'd the ſeveral Sums following, (*to wit*)

To *William Emery* Two Pounds Thirteen Shillings and Five Pence.

To *Mary Morton* One Pound Twelve Shillings.

So here inſert the Account.

And the ſaid *John* and *Daniel* further in accounting ſay, That the ſaid Sum of Thirty Pounds, by the Hands of Mr. *Gueſt*, ſuppoſed as above in the ſaid Declaration to have been paid to the ſaid *John* and *Daniel*, was paid by Miſtake of the ſaid Mr. *Gueſt*, and that nothing thereof in any Manner was due and payable to the ſaid *John* and *Daniel*, as Church-wardens of the ſaid Church, more than the ſaid Sum of Three Pounds Fourteen Shillings and Six Pence; for which Reaſon the ſaid *John* and *Daniel*, immediately after the Receipt of the ſaid Thirty Pounds, (that is to ſay, the Day and Year laſt mention'd) paid back again and reſtored to the ſaid Mr. *Gueſt*, Twenty-Six Pounds Five Shillings and Six Pence of the ſaid Thirty Pounds.

And the ſaid *John* and *Daniel* further accounting ſay, That the ſaid Sum of Twenty Pounds, ſuppoſed by the ſaid Declaration to have been paid by the Hands of *Robert Clouds* to the ſaid *John* and *Daniel*, as above, were paid thro' the Miſtake of the ſaid *Robert Clouds*, nothing being then due or payable to the ſaid *John* and *Daniel*, as Church-wardens of the Church aforeſaid, by which the ſaid *John* and *Daniel*, immediately after receiving the ſame (*to wit*) the Day and Place laſt mention'd, did render back and reſtore to the ſaid *Robert Clouds* the ſaid Twenty Pounds; all which ſaid ſeveral Sums paid by the ſaid *John* and *Daniel* as above, amount in the whole to Three Hundred Sixty-five Pounds Three Shillings and Seven Pence; wherefore the Surplus of One Hundred Thirty-one Pounds Three Shillings and Seven-pence, is and remains due to the ſaid *John* and *Daniel*. And the ſaid *John* and *Daniel* further accounting ſay, That true it is, that the ſaid Goods and Chattels in the ſaid Declaration mention'd, came to, and are now in their Hands, except one Surplice, which was privately ſtolen away from them by certain Perſons unknown, and that the reſt of the ſaid Goods and Chattels are of the Value of Twenty Shillings, and no more, and this the ſaid *John Eagle* and *Daniel Franklyn* are ready to verify; wherefore they pray (the ſaid Twenty Shillings being firſt deducted and allow'd out of the ſaid Surpluſage) that the ſaid *John* and *Daniel* may be allow'd the ſeveral Payments above ſpecify'd in their ſaid Account, and may be allow'd the Reſidue of the ſaid Surpluſage above the ſaid Twenty Shillings, and that the ſaid *John* and *Daniel* may be diſcharg'd from the ſaid Premiſſes, whereof they are convicted to account, *and ſo forth.*

And the ſaid *Joſeph Biſhop* and *John Andrews* ſay, That the ſaid *John Eagle* and *Daniel Franklyn*, or either of them, ought not to be allow'd or diſcharg'd from the ſaid Two Hundred Thirty-four Pounds, wherewith they have above charged themſelves, nor ought they to have any Allowance of any Surplus, becauſe as to the ſaid ſeveral Sums which they above ſuppoſe to have paid for the Maintenance and Cure of the Poor to be kept and maintain'd by the ſaid Pariſh, the ſaid *John Eagle* and *Daniel Franklyn* ought not to be allow'd or diſcharg'd from the ſame ſeveral Sums, becauſe the ſaid Two Pounds Thirteen Shillings and Five Pence, which the ſaid *John Eagle* and *Daniel Franklyn* above ſuppoſed to have paid for the Maintenance and Cure of *William Emery*, the ſaid *Joſeph* and *John Andrews* ſay, That the ſaid *John Eagle* and *Daniel Franklyn* ought not to be allow'd or diſcharg'd from the ſaid Two Pounds Thirteen Shillings and Five Pence, becauſe they ſay, that the ſaid *John Eagle* and *Daniel Franklyn* did not pay the ſaid Two Pounds Thirteen Shillings and Five Pence, or any Part thereof, in Manner and Form as the ſaid *John* and *Daniel* have above alledged; and this they pray may be try'd by the Country; and the ſaid *John Eagle* and *Daniel Franklyn* do likewiſe the ſame. And as to the ſaid One Pound and Twelve Shillings, which the ſaid *John Eagle* and *Daniel Franklyn* above ſuppoſe to have paid for the Maintenance and Cure of *Mary Morton*, the ſaid *Joſeph* and *John Andrews* ſay, That the ſaid *John Eagle* and *Daniel Franklyn* ought not to be allow'd or diſcharg'd from the ſaid One Pound and Twelve Shillings, becauſe the ſaid *Joſeph* and *John Andrews* ſay, That the ſaid *John Eagle* and *Daniel Franklyn* did not pay the ſaid One Pound and Twelve Shillings, or any Part thereof, in Manner and Form, as the ſaid *John Eagle* and *Daniel* have above alledged; and this they pray may be try'd by the Country, and the ſaid *John Eagle* and *Daniel Franklyn* do likewiſe the ſame (the like ſeparate Iſſues, as to the Three Pounds Fifteen Shillings and Six Pence, to be paid for the Maintenance of *Anne Bartholomew* and *Elizabeth Shorter*, and others mention'd in ſeveral other Iſſues taken to the particular *Items* of the Account.) And as to the ſaid Twenty-Six Pounds Five Shillings and Six Pence, which the ſaid *John Eagle* and *Daniel* above ſuppoſe to have render'd and reſtored back to the ſaid Mr. *Geſque*, and alſo as to the ſaid Twenty Pounds which the ſaid *John* and *Daniel* above ſuppoſe to have render'd and ſatisfy'd to *Robert Clouds*, and alſo as to any Allowance of the Reſidue of the ſaid Surplus in the ſaid Plea of the ſaid *John* and *Daniel*, mention'd to be made to the ſaid *John* and *Daniel*, the ſaid *Joſeph* and *John Andrews* ſay, That the Plea of the ſaid *John* and *Daniel* is not ſufficient in Law to diſcharge the ſaid *John Eagle* and *Daniel* from the ſaid ſeveral Sums of Twenty-Six Pounds Five Shillings and Six Pence, and Twenty Pounds, and to cauſe any Allowance to be made to the ſaid *John* and *Daniel* of the Reſidues of the ſaid Surplus, and that the ſaid *Joſeph* and *John Andrews* are under no Neceſſity, nor by the Laws of the Land in any wiſe bound to make anſwer to the ſaid Plea pleaded in Manner and Form aforeſaid; as to the ſaid ſeveral Sums of Twenty-Six Pounds Five Shillings and Six Pence, and Twenty Pounds, and to have any Allowance of the ſaid Reſidue of the ſaid Surplus to be made to the ſaid *John Eagle* and *Daniel*; and this the ſaid *Joſeph* and *John* are ready to verify; wherefore, for want of a ſufficient Plea in that Particular, the ſaid *Joſeph* and *John Andrews* pray Judgment, and that the ſaid *John Eagle* and *Daniel* may be charg'd with the ſaid ſeveral Sums of Twenty-Six Pounds Five Shillings and Six Pence, and Twenty Pounds, and that they the ſaid *John* and *Daniel* may be excluded from any Allowance of the ſaid Reſidue of the ſaid Surplus, *and ſo forth.* And the ſaid *Joſeph Biſhop* and *John Andrews*, as to the ſaid Goods and Chattels in the ſaid Declaration ſpecify'd to have come to the Hands of the ſaid *John Eagle* and *Daniel* (except the ſaid Surplice which the ſaid *John Eagle* and *Daniel* above ſuppoſe to have been privately ſtolen away) ſay, that the ſaid Goods and Chattels are above the Value of Twenty Shillings (*to wit*) of the Value of Fifty Shillings; and this they pray may be try'd by the Country. And as to the ſaid Surplice, the ſaid *Joſeph* and *John Andrews* ſay, That the ſaid Surplice was not privately ſtolen away from them in Manner and Form as the ſaid *John Eagle* and *Daniel* have above alledged; and this they likewiſe pray may be try'd by the Country, and the ſaid *John Eagle* and *Daniel* pray likewiſe the ſame. And the ſaid *John Eagle* and *Daniel*, for that the rendring and reſtoring back the ſaid Money to the ſaid Mr. *Gieſque* and *Robert Clouds*, was in Law giving a good Account of the ſame, and ought to be allow'd as ſuch in and upon the ſaid Account. And for that the ſaid *John Eagle* and *Daniel* ought to have an Allowance of the ſaid Surplus of the ſaid Account, in Manner and Form aforeſaid, and have alledged ſufficient Matter in Law to have ſuch Allowance; which they are ready to verify; and which the ſaid *Joſeph Biſhop* and *John Andrews* do not in any wiſe deny, nor have in any wiſe anſwer'd thereto, the ſaid *John Eagle* and *Daniel* as before, pray that they may have the ſaid Allowances in and upon the ſaid Account of the ſaid ſeveral Sums ſo as aforeſaid render'd and reſtored, and that they may be diſcharged therefrom; and alſo, that they may have an Allowance made to them in their Account as to the ſaid Surplus, in Manner and Form aforeſaid. And as to the ſaid Plea of the ſaid *Joſeph* and *John Andrews*, as to the Value of the ſaid Goods and Chattels, (except the ſaid Surplice) the ſaid *John Eagle* and *Daniel* ſay, that the ſaid Plea of the ſaid *John* and *Daniel* pleaded in Manner and Form aforeſaid, is inſufficient in Law, to which they are under no Neceſſity, nor by the Laws of the Land are bound to make any Anſwer; and this they are ready to verify. And for Cauſes of Demurrer in Law, the ſaid *John Eagle* and *Daniel*, according to the Form of the Statute in that Caſe made and provided, ſhew to this Court the ſeveral Matters following; that is to ſay. *Here ſet forth the Cauſes of the Demurrer.*

Readings and Obſervations on Caſes in Account.

AN *Action of Account* is to be brought againſt one who is liable to render an Account in Regard of his Office, having received Monies to the Uſe of another, and refuſed to render an Account thereof; and to maintain this Action, there muſt be theſe three following Circumſtances incident to the Caſe.

As *Firſt*, The Party to be ſued muſt have no Claim in the Thing Owen 36.
demanded to his own Uſe; for if he has, this Action does not lie against him. 3 Lev. 24.

Secondly, There muſt be a Privity between the Parties, either by Owen 36.
their Conſent, or a Privity created by Operation of Law, as in Caſe of a Guardian; as where Goods are deliverd to a Stranger to my Uſe, or to be given over to me, there is no Agreement between the Parties; and for want of Privity between me and the Party that hath the Goods, I cannot have this Action of Account: So if a Man have a Leaſe of a Parſonage, and the Defendant not being Leſſee, nor claiming any Intereſt, takes the Tithes when ſet forth, and carries them away, the Leſſor cannot have this Action for want of Privity; tho' true it is, that if *H.* receive my Rents in my Name, I may have an Action of Account againſt him; for my Aſſent to his receiving it, makes a Privity, nor is he ſimply a wrong Doer; for Hutt. 36.
when he hath received my Money, he hath not committed any Wrong againſt me, becauſe it is not my Money till it is paid. But 4 Leon. 2.
in the Caſe of the Crown, by Reaſon of the Prerogative, the Law will ſupply a Privity.

Thirdly, Where the Perſon that delivereth the Goods or Money, hath taken no Security for the ſame; for where the Party hath taken Security, the other Perſon who hath the Goods or Money cannot be ſaid to be poſſeſs'd of ſuch Things, or that he receiv'd them to render an Account of the Profits; tho' if a Bailiff doth receive Money, and promiſes to pay it, the Party who lets him have the Money may have an Account or *Aſſumpſit*; ſo that what is meant by a Security, is not here meant of a bare Right to another Action, but ſuch a Security as the Party may ſue upon the Security itſelf; for in ſome Caſes Debt and Account will lie for the ſame Thing.

Fourthly, Where the Party that hath the Thing that is demanded, hath not only a bare Overſight thereof, as a Shepherd of Sheep, or the like, but muſt have ſo far a Property as to be able to change the ſame for the Benefit of the Bailor (which is the Perſon whoſe Money or Goods they were) or at leaſt to make Advantage thereof, in order to render an Account for the ſame. 11 *Co.* 93. *Dyer* 114. and 20. 277. *Bro. Account.* 81, 29.

In this Action of Account, the Authorities in the Books I ſhall inſert under the following Heads.

1. Where this Action may or may not be brought, in Reſpect to the Thing prayed to be accounted for.

2. Againſt whom it may or may not be brought in Reſpect to the Perſon of the Defendant.

3. Who may have this Action of Account in Reſpect to the Perſon of the Plaintiff.

4. Where the Defendant is to be charg'd as Bailff, Receiver, or Guardian, and the Difference therein.

5. Of the Proceedings in this Action to the firſt Judgment, and concerning the ſame.

6. What is or is not a good Bar to the Action.

7. Of the Auditors in Account their Power and Duty.

8. What ſhall be a good Diſcharge before Auditors.

Laſtly. Of the ſecond Judgment and the other Proceedings therein, that the Parties may have Juſtice according to the Wiſdom of the Laws of England.

1. Where this Action may or may not be brought in Reſpect of that Thing to be accounted for.

Againſt one that receives another's Rents.

1. If a Man will enter upon my Land upon any Pretence to my Uſe, and take the Profits of it; for me, I may have this Writ, and charge him to account for it: So if a Man will take up my Rents as my Bailiff, not being ſo appointed by me, I may have this Writ, and charge him to account for them: But if a Man enters upon my Land as a Diſſeiſor, and keeps the Poſſeſſion of it, in this Caſe it ſeems this Writ will no lie. *Co. ſuper Lit.* 89, 90. *Dyer* 277. 2 *Leonard* 92. *Amner & Luddington*, 3 *Leonard* 89. the ſame Caſe. *The new Nat. Brev.* 266.

For Money deviſed to iſſue out of Land.

2. If one deviſe that his Executors ſhall ſell his Land, and out of the Profits thereof, ſhall give ſuch a Sum to me, in this Caſe, and ſuch like, where the Money is to iſſue out of the Land, I may have a Remedy by this Writ, and I need not ſue for it as for a Legacy. *Dyer & per* three Juſtices. *Roll. Abr.* 116.

Deviſe of Goods not deliver'd.

3. If a Man gives me Goods by his Will, and his Executor will not deliver them, I cannot recover them by this Action. *Co.* 11. 89.

For Money levied by a Sheriff by Execution.

4. If a Sheriff levy Money on a *Fieri Facias* for me, and does not pay it to me, I may have this Action to recover it. 13 *H.* 7. 1. *Et per Curia in Communi Banco, March f.* 13. *pl.* 33. Or an Action of Debt. *Hob.* 206. Speaker *ver.* Richards. *Noy* 22. the ſame Caſe only called *Spache* againſt *Richards*. *Moor* 886. 1 *Brow.* 51. the ſame Caſe.

It lies not for Things that are certain.

5. If a Man delivers 10 *l.* to merchandize, no Account doth lie for the 10 *l.* for this is certain, but for the Profits thereof which are Uncertain it doth lie; ſo it doth not lie for the Arrears of a Leaſe for Years, or at Will, becauſe it is Certain, for uncertain Things lie only in Accounts. *Bro. Account* 81. 8 *H.* 53.

Lies not for Rent alone, unleſs mixed with other Things.

6. So Rent alone lieth not in Account, for this a certain Thing, and in the Realty; but if a Rent be mixed with other Things, an Action of Account will lie for it. *Styles* 287. Hamond *againſt* Ward.

Notwithſtanding a Covenant.

7. The Defendant did by his Deed, acknowledge the Receipt of 100 *l.* from the Plaintiff, to be imployed by him in Merchandize, and covenants at his Return to account to him; and it was held notwithſtanding the Covenant, that he might have an Action of Account, for the Covenant did not change the Caſe. *Bulſt.* 2. 256.

For Money received to my Uſe.

8. *A.* was indebted to the Plaintiff 200 *l.* the Plaintiff required the Defendant to receive it of *A.* and pray'd the Defendant to borrow ſo much for him, and pay it to the Plaintiff. The Defendant did borrow 200 *l.* of *J. S.* and *A.* was bound for the Repayment of it; and it was held, that the Defendant muſt account for this Money, for he received it by the Direction of *A.* and of *J. S.* for *A. Harrington* and *Dean*'s Caſe. *Moor*, Caſe 1184. *fol. Harrington* ver. *Dean*.

Goods ſent beyond Sea.

9. If I deliver to another, Goods or Money beyond Sea, to be deliver'd to me here again in *England*, at a certain Place, and he deliver it not, I may be relieved by this Action. *F. N. B.* 118. 9. *New N. B.* 271.

Whether by Adminiſtrators.

10. If one receives Money to bear an Adventure to *Roan*, to beſtow the ſame there in Merchandizes, and then dies Inteſtate, and Adminiſtration is committed to *J. S.* in this Action he might not at Common Law ſue for Relief, but an Action of Debt would lie for it. *Dyer* 20, 21. But now by the Act of 4 and 5 of Queen *Anne*, *cap.* An Action of Account lieth for and againſt Executors, and for one Jointenant againſt another.

11. If two Joint Merchants occupie their Goods, Stocks, and Merchandizes in Common, to their common Profit, one of them may have this Writ againſt the other, but then they muſt be both of them named Merchants in the Writs, *Co. ſuper Lit.* 172. and a Man could not have touched the King's Lands, or medled with his Goods, but he was liable to be queſtioned by this Remedy, and to be called to an Account in the Exchequer, tho' not by this Writ. *Co.* 11, 91. Yet ſee 1 *Roll's Abridgment:* If two Merchants have Goods in Common, one of them may not bring it againſt the other. 118.

Between Joint Merchants.

12. For Accounts to the King and his Accountants. See Stat. 4 *H.* 6. *cap.* 2. 7 *E.* 6. *cap.* 1. 6 *H.* 4. *cap.* 3. 1 *R.* 3. *cap.* 4. See Prerogative of the King. *Co.* 11. 90. *Godb.* 289. 13 *Car.* 2. *cap.* 3. 14 *Car.* 2. *cap.* 14. 13 *Car.* 2. *cap.* 13. ——— 13 & 14 *Car.* 2. *cap.* 16. 16 & 17 *Car.* 2. *cap.* 6. 19 *Car.* 2. *cap.* 9. 22 & 23 *Car.* 2. *cap.* 23. 2 *W.* & *M. cap.* 11. 4 & 5 *W.* 3. *cap.* 11. 5 & 6 *W.* 3. *cap.* 23. 6 & 7 *W.* 3. *cap.* 9. 7 & 8 *W.* 3. *cap.* 8. 11 & 12 *W.* 3. *cap.* 8. 1 *Ann. cap.* 19. 1 *Ann. cap.* 20. 1 *Ann. cap.* 24. 2 *Ann. cap.* 17. 9 *Ann. cap.* 13. 10 *Ann. cap.* 8. 1 *Geo.* 1. *cap.* 24. 1 *Geo.* 1. *cap.* 35. 3 *Geo.* 1. *cap.* 17. 4 *Goe.* 1. *cap.* 9. 5 *Geo.* 1. *cap.* 14.

2. Againſt whom it may or may not be brought, in Reſpect to the Perſon of the Defendaut.

1. It lieth againſt the Husband for the Receipt of Money by his Wife, and againſt Wife and Husband for the Receipt of Money by the Wife whilſt ſhe was Sole, but it lieth not againſt a Wife without her Husband. 4 *E.* 4. 25. *Bro. Account* 68, 82. *Dyer* 202.

Againſt Husband for Receipt by his Wife.

2. It lieth againſt a Body Politick, as againſt any Man. 19 *H.* 65. It lieth againſt a Servant that hath a Command to receive for his Maſter. 19 *H.* 6. 5.

Body Politick.

3. It lieth againſt the Keeper of a Park, that hath the Charge of the Deer as Bailiff of his Park. 10 *H.* 7. 6.

Keeper of a Park.

4. At Common Law it might be brought againſt an Executor or Adminiſtrator, any other that medleth with the Lands of the King in his Caſe; but in the Caſe of a common Perſon, it did not lie againſt an Executor, or an Adminiſtrator at Common Law; but by 4 & 5 *Anne*, it is now otherwiſe. *Lit.* 28. *Co.* 11. 84, 90.

Againſt an Executor or Adminiſtrator.

5. This Action will not lie againſt an Infant as Bailiff or Receiver. *Lit.* 28. *Co. upon Lit.* 172. Nor againſt a Diſſeiſor for the Profits of the Land, *Co.* 11. 89. *Co. Lit.* 72. Nor againſt a Pariſh Prieſt, for offerings without ſome Agreement. *F. N. B.* 119. Nor againſt a Surveyor, or Apprentice, (unleſs in the Caſe hereafter, and other Caſes in the like Nature) nor againſt a Comptroler, Reeve, or Hayward, unleſs he can be charged as Bailiff or Receiver. 7 *New Nat. B.* 272.

Not againſt an Infant, nor againſt a Diſſeiſor, nor againſt a Pariſh Prieſt, nor Appretnice.

6. It would lie for the Grantee of the King againſt an Executor at Common Law. 3 *Leon.* Caſe 250. If the Bailiff make a Deputy, yet the Writ ſhall be againſt himſelf. *F. N. B.* 119. *b.*

Againſt Executor.

Bailiff making a Deputy.

7. *Mich.* 15 *Eliz. B. R.* It was ſaid by the whole Court, that if *A.* deliver Money to *B.* to buy Cattle, or to Merchandize with, although the Money be ſealed up in a Bag, yet the Property of the Money is not in *B.* and cannot have an Action for the Money, but only an Account againſt *B.* though he never buy the Cattle or other Things; for the Auditors upon the Account ſhall allow him the Sum, and ſuch other Allowances as they ſhall think fit. And if *C.* take away the Money after the Death of *B.* or in his Life-time, *A.* ſhall not have an Action againſt the Stranger, but the Executors of *B.* or againſt *B.* himſelf, during his Life: And therefore, if he who takes the Money from *B.* promiſes *A.* to pay him the like Sum of Money as *B.* had received of him in his Life, and as ſhould be truly proved by *A.* Action of the Caſe will lie upon that Promiſe. 3 *Leon.* Caſe 62.

Money delivered to B. to buy Cattle.

8. If one enter into Land, claiming by Deviſe where the Land deviſed is entailed, and receive the Profits, he may not be charged in an Account. 1 *Leon.* 266.

Profits of Land entailed.

9. And tho' it hath been ſaid that this Action might lie againſt a Servant, but would not lie againſt an Apprentice. *Goldſb.* 161. *Co.* 11, 89. Yet in ſome Caſes it will, as for Inſtance, ———

Againſt a Servant.

Againſt an Apprentice.

10. *Hill.* 19 *Eliz. B. R. Rivers* and *Pudſey.* In Account, the Defendant ſaid, that at the Time, &c. and now he is the Plaintiff's Apprentice, and demanded Judgment, &c. and it was held no Plea; for although an Apprentice may not be charged for this Action for ordinary Receipts upon his Maſter's Trade, yet upon collateral Receipts, which do not concern the ordinary Trade of his Maſter, he ſhall be charged as well as another. *F. N. B.* 119. 8 *E.* 3. Tit. *Account* 94. 3 *Leon.* Caſe 92.

11. If a Tenant by *Elegit* of my Land do make Waſte upon the Land, and hath received more than his due Money, I may call him to Account by this Writ, 12 *E.* 3. 30. and if there be two Jointenants, or Tenants in common of Land, and the one

Tennant by Elegit.

one of them doth make the other his Bailiff of his Moiety, and he will not anſwer him the Profits, he may by this Writ compel him to it. *Co. ſuper Lit.* 172. *F. N. B.* 118. *Roll's Abridg.* Account 117.

Bailiff making a Deputy. 12. *A.* having a Bailiwick, makes *B.* his Under-Bailiff to gather the Amerciaments; he ſhall have an Account againſt him. 3 *E.* 3. 54.

Guardian, Bailiff, or Receiver. 13. It lieth againſt a Man or Woman Guardian, Bailiff or Receiver, that is of Age, and diſcovert at the Time, otherwiſe not. *Roll's Abridgment.* Account 117. *Co.* 1. 89. *F. N. B.* 119. 19 *H.* 6. 6. It may lie againſt the Huſband and Wife, 18 *E.* 3. 35. *Pl.* 76. And though it laid againſt the Guardian in Socage, yet at Common Law it would not lie againſt the Executors of ſuch a Guardian, but now otherwiſe by the Act of 4 & 5 *Anne*.

Againſt a Woman. 14. A Man may have this Action againſt a Woman as Receptrix, or againſt a Chaplain, but not againſt an Infant. 19 *H.* 6. 5. 3 *E.* 4. 40. 15 *E.* 4. 16. *contra.*

Guardian of Copyhold Lands. 15. This will not lie againſt a Guardian that ſhall take the Profits of my Copyhold Lands who am an Infant. *Cro.* 3. *fo.* 229. *Hughs* and *Harris.* It may lie for Woods, or Underwoods, Lands, Rents, Services, Profits of Courts, and the like. *Lib. Intr.* 21. *B. C.*

3, Who may have this Action of Account in Reſpect to the Perſon of the Plaintiff.

Partners. 1. If two Men be Partners of Merchandizes in one Ship, and one of them makes a Factor of all his Merchandizes, in this Caſe both of them may join in this Writ, or have ſeveral Writs againſt the Factor. *Godb.* 90. *contra in* 1 *Brownl.* 26. there it is ſaid, he only that deliver'd them ſhall have this Action.

Merchants. 2. One Merchant may have it againſt another Merchant, where they occupy their Merchandizes, and trade together. *F. N. B.* 117. *Co. Inſt.* 1 *Part* 272. Alſo one that is a Lunatick, when he ſhall come to be of ſound Memory again, may have this Writ. *Dyer* 25. *New N. B.* 267.

Money received to my Uſe. 3. If one receive Money of another to my Uſe, or to pay over to me, and he do not pay it to me, I may have this Action againſt him, and ſo may he that delivered the Money to him. *Dyer* 22, 57. 18 *Ed.* 4. 23. Or an Action of Debt. *Godb.* 210.

For the King againſt a Debtor. 4. It lies for the King againſt his Debtor, or his Executors, or Tertenants, *Dyer* 25. And if any takes the Goods of the King's Debtor, which dies, the King ſhall have an Account againſt him. *Co.* 21, 93.

Sheriff or General Receiver. 5. A Sheriff accountable to the King, may have an account againſt his Deputy Sheriff, and one that is General Receiver to *J. S.* over all *England*, that makes *J. L.* his Deputy Receiver in one County, the Deputy is to account to the General Receiver, for what the General Receiver doth account. *Roll's Abr.* 118. *F. G.*

Recuſant. 6. A Recuſant may not have this Action for any thing that is ſeized in the King's Hands. Stat. 3 *Jac. cap.* 5.

For the Profits of a Wife's Land. 7. If a Stranger takes the Profits of my Wife's Land during our Marriage, and I die, my Executor, and not my Wife, ſhall have this Action for the Profits. *F. N. B.* 119.

The Heir in Ward. 8. The Ward may have this Writ againſt his Guardian in Socage, *Lit.* 124. *F. N. B.* The Executor or Adminiſtrator of the Heir upon Accounts to be made to the Teſtator. Stat. 13 *E.* 1. *cap.* 23. *Dyer* 23. *Kelw.* 131. The Succeding againſt the Preceeding Church-wardens. 8 *E.* 4. 6. *Bro.* Account 71. But the Pariſhioners cannot bring it againſt the Church-wardens.

9. But ſome hold, that the Heir in Ward to the Guardian in Socage, may not ſue the Guardian till he be Twenty-one Years old. See *Cro.* 1. *fol.* 131. *Dyer* 137. 18 *E.* 3. 55. 29 *E.* 3. 5. *Doct. & Stud.* 14 *Old. N. B.* 91. *Gliſton* and *Gulſton* 2. But this is not Law. *Coke Inſtit.* 1. *Part* 89.

For and againſt Executors. 10. This Writ will lie for Executors or Adminiſtrators, and Executors of Executors, *Weſt.* 2 *cap.* 23. 25 *E.* 3. *cap.* 5. 31 *E.* 5. *cap.* 11. And now the Act of the Amendment of the Law, in the 4th and 5th of Queen *Anne*, it will be againſt Executors

Infant. 11. If one deliver Goods to deliver to me an Infant, at my full Age, in this Caſe when I am of Age, I may recover them of him in this Action, or in Detinue at my Choice. *Fitz.* Detinue 53.

A Legacy. 12. A Legacy was given to a Feme Covert, the Huſband and Wife gave one a Letter of Attorney to receive it of the Executor, who did receive it to the Uſe of the Wife; ſhe and her Huſband died, and the Adminiſtrators of the Huſband brought an Account, and it was held it might well lie, and ſo would it have been, if he alone had made the Letter of Attorney. *Goldsb.* 158.

Mortgage Money.

13. If the Mortgagee, after the Payment of the Money by the Mortgager, deliver him the Money again, the Mortgagee may recover it by this Action, adjudged *Mich.* 4 *Eliz.*

Two adjudged to account, one appears, and the other outlaw'd.

14. If Two be adjudged to account, and a *Ca. & exfa.* iſſue, and one appears, and the other be outlaw'd, he that appears ſhall account alone, for that the Plaintiff's Proceſs is determin'd againſt the other. And ſo if one die, the other ſhall account alone; and if one be adjudged to account, and will not, he ſhall be committed to the Fleet. 1 *Brownl.* 25.

Jointenants.

15. When there are two Joint-Tenants of a Wood, and one ſells all, and takes all the Money, the other might not have this Action againſt him at Common Law; but now, by the Statute of the 4 and 5 of Queen *Anne* 'tis otherwiſe.

Joint-tenant, and Tenant in Common.

16. If one Joint-Tenant, or Tenant in Common, makes his Companion his Bailiff of his Part, he may have this Action againſt him; and if one Joint-Tenant, or Tenant of Goods in common, deliver them to a Stranger, he alone muſt have the Action. *Co.* 11, 89. *New Nat. Br.* 118.

4. Where the Defendant is to be charged as Bailiff, Receiver, or Guardian, and the Difference therein.

When as Bailiff.

1. And he that brings this Action muſt take heed that he charge the Defendant in a proper Manner, as the Caſe is; as Bailiff, Receiver, or Guardian. If he be Bailiff, the Writ muſt charge him ſo; if Receiver, he muſt name him ſuch; and if both, the Writ muſt charge him ſo. Where the Things, of which a Man doth receive the Profits, (whether it be Land or Goods) be uncertain, as a Manor, Hundred, or the like, that may be improved, there he ſhall be charged as Bailiff; but where the Things (be it Profits of Courts, Forfeitures, Iſſues, Fines, Amerciaments) be certain, there he ſhall be charged as Receiver. 9 *E.* 4. 40. 2 *Bulſtr.* 277.

What is a Bailiff.

2. By Bailiff we underſtand a Servant that hath had the Adminiſtration or Charge of Lands, Goods or Chattels, to make the beſt Benefit thereof for the Owner; ſo an Action will lie againſt a Bailiff, not only for what he hath, but alſo for what he might have had and made by his Induſtry, his reaſonable Charges allow'd; and by this Writ one may charge any one as Receiver that hath received Money, or other Things for me, or to my Uſe. *Co. Litt.* 271. 2 *Leon.* 245.

As Bailiff.

3. If one charges me as Bailiff of his Goods *ad Mercandizandum*, in this Caſe I muſt anſwer for the Increaſe, and ſhall be puniſh'd for my Negligence; but if he charge me as his Receiver *ad Computandum*, I ſhall not be anſwerable but for the bare Money or Thing which was deliver'd. *Godb.* 55. *Co. Litt.* 172. 3 *Leon.* Caſe 311. 1 *Cro.* 82.

4. A Bailiff ſhall have Allowances upon his Account, for what he diſburſes for his Maſter, belonging to his Office, as to pay his Quit-Rent, or the like; or if he be robb'd, or ſuffer Loſs by other Means, without any Default in him, it ſhall be allow'd him upon his Account; but if he pay his Maſter's Debts, or lay out any Thing elſe not appertaining to his Office, this will not be allow'd him. *Co. upon Litt.* 172. 14 *H.* 7. 14. *Plow.* 14.

Guardian to be charged as Bailiff.

5. If an Heir ſues his Guardian for the Profits of his Lands, taken before he is Fourteen Years old, he muſt charge him as Guardian; but if he ſue him for taking of the Profits after this Age, there he muſt ſue him as Bailiff; and if the Heir ſues a Stranger that doth intermeddle with his Lands, he muſt charge him as Guardian. *New Nat. Br.* 270. *Dyer* 157. *Bro. Account* 30.

Againſt Guardian as Bailiff.

6. An Infant was admitted to ſue an Account againſt his Guardian in Socage, for the Profits received after the Infant came to be Fourteen Years old, and the Action was brought againſt him as Bailiff. *Cro.* 2. *Fol.* 219. *Anonymus.*

As Bailiff.

7. If I deliver another Wares to ſell, and he ſells them to divers Perſons, and recives the Money, here he is to be charged as Bailiff, not as Receiver. 4 *H.* 6. 27. *Bro. Accompt* 8, 53.

Bailiff of his own Wrong.

8. If one becomes my Bailiff of his own Wrong, without my Commandment, he is accountable to me, but I am not compellable to make him any Allowance for his Expences about my Buſineſs; and if I aſſign to ſuch Bailiff, of his own Wrong, an Auditor, he cannot make Allowance of ſuch Expences. 1 *Leon.* 229. Caſe 301.

A Receiver.

9. A Receiver of Money is not compellable to make Adventure, for fear of Loſs; and therefore, if he makes Oath, that he did not find any Thing that he dared to buy, for fear of Loſs, the Plaintiff ſhall be bound to receive his principal Sum; for if he had Loſs, the Maſter is bound to ſuſtain it. 46 *Ed.* 3. *Bro. Account* 66.

Receiver. 10. If I deliver a Tun of Wine, or a Laſt of Herrings to ſell, and the Bailiff ſells them, I ſhall not have an Action of Account againſt him for the Money, as Receiver, for as ſuch he would have no Allowance of Coſts for his Labour, but I may have Account againſt him as Bailiff. 43 *E.* 3. 21. 46 *E.* 3. 9. 4 *H.* 6. 27. 1 *Roll's Abr*. 118.

Bailiff. 11. And a Bailiff ſhall have an Allowance of caſual Things of common Courſe, paid or done by him without any Command, as for Relief, but not for other caſual Payments, if he has not a ſpecial Command. 41 *E.* 3. 33.

5. Of the Proceedings in this Action to the firſt Judgment, and concerning the ſame.

1. The Proceſs in an Account at Common Law was *Summons*, *Pone* and Diſtreſs, and upon a *Nichill* return'd upon the *Summous*, *Pone* on Diſtreſs, an Outlawry laid, and the Proceſs is to be returned from Fifteen Days to Fifteen Days; and in which Action Eſſoin lies, 15 *Jac.* in the Common Pleas. *Brownlow*, 1 Part, 24. and by the Statute of *Marlbridge* a *Capias* is given in Account.

Of the firſt Judgments. **A Capias ad Computandum to go.** **Of Bail to be taken.** **To appear before the Auditors.** **Auditors to certify to the Court.** **Of Verdict.** **A Capias ad Satisfaciendum.** 2. In an Action upon Account there are Two Judgments; the firſt Judgment is, That the Defendant ſhall account; and becauſe he hath not accounted before, in this firſt Judgment the Plaintiff ſhall not recover Coſts or Damages, but a *Capias ad Computandum* only ſhall iſſue; and if a *Non eſt Inventus* ſhall be return'd thereupon, then an Exigent will lie: And when the Defendant is by Rigour of Law impriſon'd, yet the Court, in Favour of him, doth take Bail, for he ſhall account before Auditors, which the Court ſhall appoint, and he ſhall appear from Day to Day before the Auditors, until the Account ſhall be determin'd; and before the Auditors the Plaintiff or Defendant may join Iſſue, or demur upon the Plea pleaded before the Auditors. And if any of the Parties ſhall make Default, and ſhall not appear, then if after Appearance the Defendant ſhall not plead, or if he ſhall join Iſſue, or join in Demurrer, the Auditors ſhall certify that to the Court, and the Court ſhall proceed to Trial of the Iſſue, if the Iſſue be join'd, or by arguing the Demurrer, as the Cauſe ſhall require: And if the Plaintiff ſhall make Default, or ſhall not proſecute; or if the Defendant ſhall not anſwer, the Court may commit him to the Fleet; and if Verdict paſs for the Plaintiff, Coſts and Damages ſhall be recover'd, and the Plaintiff ſhall recover his Goods or Monies demanded, with his Coſts and Damages, and *Fieri Facias*, *Elegit*, or *Capias ad Satisfaciendum* ſhall be awarded; and if a *Non eſt Inventus* be return'd then an Outlawry after Judgment, or an Action of Debt. 15 *Jac. in Co. B.* See *Brownlow*, 1 Part, 24, 25. 2 *Cro.* 234. 11 *Co. Metcalf's* Caſe

No Abatement. 3. After the firſt Judgment, there can be no Abatement for any Cauſe, but a Diſcontinuance, or Non-ſuit may be.

No Writ of Error. 4. No Writ of Error can be had 'till the Second Judgment is given. 11 *Co.* 40. *Metcalf's* Caſe. *Palmer* 2.

When Judgment to be final. 5. After a Trial upon Iſſue, *Plene Computavit*, the Plaintiff moved for a new Trial; the Court came into it, for that the firſt Judgment could be no leſs than that he ſhould account. But *Twiſden contra*; for here he hath own'd he was to account, and the Judgment now ſhall be final. 3 *Keb*. 805.

When a Capias ad Computandum de novo ſhall iſſue. 6. *Mich*. 29. 30 *Eliz. C.B.* It was agreed by the whole Court, and affirm'd by the Prothonotaries, That if in an Action the Defendant be adjudged to account, and be taken by a *Capias ad Computandum*, and ſet to Mainprize, pending the Account before the Auditors, and doth not keep his Day before them, that a *Capias ad Computandum de novo* ſhall iſſue forth againſt him. 1 *Leon. Fol.* 87. Caſe 109.

Of Wager of Law. 7. The Defendant, as Receiver, cannot wage his Law where he is charged to have receiv'd Monies by the Hands of another; otherwiſe, where he receiv'd it, of Plaintiff or his Wife. 1 *Cro.* 919. *Goodrick's* Caſe.

How to declare. 8. The Subſtance of a Declaration in Account againſt Receiver is, that the Defendant be properly charged. As to the Time, it is not neceſſary, that the Plaintiff ſhould be particular therein, nor as to the *Quantum* of the Money, but it is neceſſary, that the Plaintiff ſet forth by whoſe Hands the Defendant receiv'd it. 3 *Keble* 425.

Of receiving by another's Hands. 9. And it may not here be improper to mention when it ſhall be ſaid to be received by another's Hands.

10. If the Defendant receives the Money by the Hands of the Plaintiff's Wife, it is not by another's Hand, but by the Hands of himſelf. 43 *E.* 2. 33.

11. So a Man may declare of a Receipt by the Hands of the Defendant. 15 *E.*4.16.

Monies received by the Hands of Teſtator.

12. If an Executor brings an Action of Account for the Monies receiv'd from the Teſtator, he muſt declare of Monies receiv'd by the Hands of the Teſtator. 43 *E.* 3. 33.

By the Hands of Plaintiff and a Stranger.

13. He may declare of a Receipt by the Hands of Two Strangers, 43 *E.* 3, 33. but he can't declare of Monies receiv'd by the Hands of the Plaintiff and a Stranger; for this requires Two Iſſues. 43 *E.* 3. 33.

14. But this I apprehend muſt be meant, that you can't join them in one entire Count, but ſure you may put them in one Declaration by ſeveral Counts.

By Church-Wardens where wrong.

15. Declaration by Church-wardens againſt their Predeceſſors, and charged them with *bona Eccleſiæ*; and held ill; whereas it ſhould have been *bona Parochianorum*. 2 *Keb.* 675. 1 *Ven.* 8. 1 *Mod.* 65.

Caſes concerning the Proceſs. 1 *Rol. Abr.* 117 *Pl.* 1. 4. 118 *Pl.* 1. 52 *H.* 3 *cap.* 17. 2 *Inſ.* 135, 136. *Co. Lit.* 89. *F. N. B.* 118. *Br. Account* 86. *Fitz. Accompt* 120. *Vide Kelw.* 131. *Fitz. Age* 151. *Stat. of Weſtm.* 2 *cap.* 23. 2 *Inſ.* 404. *Co. Ent.* 47. *N.* 3. *Raſt. Ent.* 21. *Stat. of Weſtm.* 1 *cap.* 47. 2 *Inſ.* 259, 260. *Co. Litt.* 90.

2 *Inſ.* 380. *Weſtm. cap.* 11. *F. N. B.* 114. *C.* 119. *F. Vide Reg.* 138. 3 *Co.* 12. *S. P. Vide Godb.* 24. 52 *H.* 3. *cap.* 23. 2 *Inſ.* 144. *Co. Lit.* 89. *F. N. B.* 117 *H. Reg.* 137, 136. 13 *Ed.* 3. *cap.* 11. 2 *Inſ.* 379, 380. *Reg.* 138.

Caſes concerning the Proceedings after Judgment to Account. *Fitz. Accompt* 65. *Br. Exigent* 21. 1 *Rol. Abr.* 131. *Pl.* 4. *Cro. Eliz.* 19. 1 *Rol. Rep.* 84. *Br. Account* 27, 37, 63. *Cro. Eliz.* 636. *S. P. Br. Accounts* 33, 40. 1 *Brownl.* 25. *Hill.* 43. *Eliz. Cro. Eliz.* 806.

6. What is or is not a good Bar to the Action.

Ne unques Receiver.

That he was robb'd.

Nil Debet.

1. Some Pleas are in Bar of the Account, and ſome in Diſcharge before Auditors; and ſome Pleas will be allow'd before Auditors, that will not be allow'd in Bar of the Account. As to the Account, the Defendant may plead *Ne unques ſon Receiver ou Bailiff pur Account render*, or that he was ſued for the ſame Cauſe, and adjudged to Account; and Error brought upon the firſt Judgment in another Court where it is depending, and the like. *Dyer* 21. *Co.* 11, 8, 9. *E.* 4. 50. And as to his Diſcharge before Auditors, he may plead (if he be not a Receiver) he was robb'd, or that he hath fully accounted with the Plaintiff himſelf, or the like. *Co.* 4, 84. 5 *E.* 4. 5. And if a new Action of Debt be brought for the Arrearages found againſt the Bailiff or the Receiver, (as it may) the Defendant may plead *Nil debet*, or wage his Law. *Co.* 6. 53. *Stat.* 5 *H.* 4. 8.

That he never was Receiver.

2. If a Defendant be charg'd as Receiver by Indenture, he ſhall not be admitted to plead he never was Receiver. 1 *Brownl.* 26.

That he was robb'd.

3. It is a good Plea in Account, that he was robb'd of theſe Goods, and of others of his own. *Mo.* Caſe 650. Payment of Part to the Plaintiff, and of Part to *B.* by his Commandment are good Pleas before the Auditors, without any Deed. *Jenk. cent.* 2 *Caſes* 25.

Writ of Privilege brought.

4. Writ of Privilege may be pleaded, and ſhall be allow'd after the Judgment *quod Computet. Weſtern* againſt *Weilds.* 2 *Leonard* 68. *Quære*, Whether this is Law? For the Party hath been guilty of a Laches, in not taking Advantage before the Judgment: And as this Plea can't be pleaded after Imparlance, it ſeems to me, this Writ ought not to be allow'd after Judgment.

5. Not having pleaded it in Bar, he hath loſt the Benefit of ſuch Diſcharge. 2 *Cro.* 234. *Bro.* and *Roll.* Tit. *Account.*

And for that I apprehend it would take up too much Room in this Treatiſe of Account, to particularize every Plea that hath been held good or inſufficient in Bar of the Account, I ſhall here inſert only a few Caſes, and refer you to the Books for the reſt.

6. That he never was Bailiff is the General Bar. 21 *Ed.* 3. 60.

7. It is a good Bar, by claiming a Legal Property in the Things to be accounted for; as to ſay, that the Plaintiff demiſed the Tenements for Life. 29 *E.* 3. 47. 12 *H.* 4 182.

8. So that the Plaintiff gave him the Money. 30 of *H.* 6.

9. And what will be a good Bar in Account, muſt ſhow, that the Defendant was never accountable, and therefore a Retainer to pay his own Debt, by the Conſent of

the Plaintiff, is not a good Bar. 12 *H.* 4. 18. 14 *H.* 4. 20. *b.* but is a good Diſcharge before Auditors, for that he gave the Plaintiff Twenty Pieces of Cloth in Satiſfaction, is not a good Bar. 30 *E.* 3. 4. *b.* 1 *Roll's Abr.* 123. *Pl.* 3. 20 *H.* 6. 55. *b.*

10. It is a good Plea, that they had ſubmitted to an Award, for that is as ſtrong as a Releaſe. *Cro. Car.* 116. *Hetley* 114.

As to the reſt, ſee 49 *E.* 3. 7. 2 *Leon.* 194, 195. *Godb.* 55, 56, 57. 14 *H.* 4. 21. 7 *H.* 14, *b.* 12 *H.* 4. 18. 14 *H.* 4. 20, *b.* 12 *H.* 4. 18. 19 *H.* 6. 5, *b.* *Bul.* 277. 1 *Mod.* 65. 2 *Keble* 675, 704. 1 *Ventris* 88. 1 *Roll's* 393. *Stiles* 410. 1 *Keb.* 491. *Br. Accompt.* 47, 69. 30 *H.* 6. 5, *b.* 29 *E.* 3. 20. 9 *E.* 4. 16, *b.* 2 *R.* 2. *Accompt* 45. 5 *H.* 5. 5. 3 *E.* 31, *b.* 29 *E.* 3. 28. 26 *E.* 3. 76. 30 *E.* 3. 1, *b.* 1 *Saund.* 50. *Latch* 59. *Raym.* 57. 19 *R.* 2. *Account* 50. 21 *Ed.* 8. 16 *Ed.* 3. *Account* 52. 21 *H.* 7. 34. 22 *H.* 6. 55, *b.* 14 *E.* 3. 72. 1 *Brownlow* 24. 1 *Roll's Abr.* 122. 9 *Ed.* 4, 46. *Cro. Car.* 116. *Yelv.* 202. 30 *Ed.* 3. 4, *b.*

7. Of the Auditors, their Power and Duty.

Difference between Auditors appointed by the Court, and thoſe elected by the Party.

That One only cannot be aſſign'd.

1. The Auditors are Perſons either choſen and aſſign'd by the Party, or otherwiſe appointed by the Court, to audit the Accounts between Party and Party: And there is a great deal of Difference between the Two Auditors, (*Ex. gr.*) As to thoſe aſſign'd by the Party, the Statute of *Weſtminſter* 2. *cap.* 11. concerning Servants, Bailiffs, *&c.* enacted, That where Maſters of Servants aſſign Auditors to take the Account, and upon ſuch Account the Servants are found in Arrearages, allowing what ought to be allow'd, their Body ſhall be arreſted, and by the Teſtimony of the Auditors of the ſame Account, be ſent or deliver'd to the next Gaol, *&c.*

2. This is *quaſi* a Commiſſion to ſuch Perſons to audit, *&c.* So that One only cannot be aſſign'd. 2 *Inſt.* 380. By this Act, the Auditors are Judges of the Record. *Ibid.* The Maſter may be found in Arrear, but he can't be impriſon'd by the Auditors. 2 *Inſt.* 280.

Allowances to be made.

3. And in the Account, the Auditors muſt allow the Bailiff his reaſonable Allowances and Expences; and if the Auditors refuſe ſo to do, or charge him with more than he hath receiv'd, his next Friend may have a Writ out of Chancery, call'd *Ex parte talis*, which is directed to the Sheriff, to bring his Body into the Exchequer, before the Barons there, with Four *Main-pernors*, to account before them at a certain Day; but this extends not to Auditors aſſign'd by the Court. 2 *Inſt.* 381.

A Day to be given, by whom.
Sti. 105.
1 Mod. 42.

4. Where a Man is adjudged to account, the Court aſſigns the Auditors. *Fitz. Accompt* 73. When Auditors are aſſign'd, and a Day given to the Defendant to account before them, if the Defendant would have that Day enlarged, the Auditors muſt do it, becauſe it is within their Authority. *Williams* and *Lee.* 1 *Mod.* 42. *Raſt.* 15, *b.* 16, *a.* But if the Auditors can't compleat the Account by the Day appointed, they muſt apply to the Court to have their Time enlarged. *Raſt*, 14. And if any of the Parties make Default, it muſt be certify'd to the Court. 1 *Brownl.* 25.

5. If I make *J. S.* my Auditor, generally, to take Accounts of all my Bailiffs and Receivers, yet he is not a ſufficient Auditor without a Patent; but if a Bailiff or Receiver be accountable to me, I may appoint one to be my Auditor, to take the Account of him, *Pro hac vice*, by Word. *Leon.* 1. Caſe 301. But if he afterwards takes an Account of any, by Force or Colour of the ſaid Warrant, without my Commandment, he is not a ſufficient Auditor to ſuch Intent, either to take the Account, or to aſſeſs the Arrearages, if the Accountant be found in Arrear, or to make Allowance, if he be found in Surpluſage. *Leon.* 1 Part, Caſe 301.

Caſes concerning the Allowance of Surpluſage.

3 *Keb.* 362. *Mich.* 12 *Jac.* 1 *Roll's Rep.* 87. *Palm.* 512. *Br. Accompt* 62. 1 *Leon.* 219. 2 *Bulſt.* 277, 278. *S. C.* 1 *Rol. Abr.* 599. *Pl.* 11. *S. C.*

8. What is or is not a good Diſcharge before Auditors.

That it muſt not.

1. A Plea before Auditors muſt not be repugnant to his firſt Plea; as where there is a Plea, that the Defendant never was Receiver, it is an Ill Plea before Auditors to plead, That *Francis T.* the Son and Heir of the Plaintiff, was bound to him in 400 *l.* that Vavaſor (by whoſe Hands the Defendant is charged to have received

120 *l.* to the uſe of the Plaintiff) paid him in Diſcharge of thoſe Bonds, and that he deliver'd the Bonds to the Uſe of the Plaintiff, becauſe he hath deny'd that he receiv'd the Monies, to render an Account; and this is contrary to the Verdict. 1 *Cro.* 836.

2. The Defendant pleads, that before the Account, the Plaintiff, of his own Wrong, impriſon'd the Defendant, and aſſign'd Auditors to him, being in Priſon; and ſo the Account was made by Dureſs of Impriſonment, and held a good Plea. *Leon.* 1. Caſe 17.

Dureſs of Impriſonment.

3. Payment by the Appointment of the Plaintiff is no good Plea before Auditors, where the Iſſue is *Ne unques* Receiver. *Hutton* 133. —— *Ancient Demeſn* is a Plea in it. *Co.* 5, 105.

4. What is a good Diſcharge before Auditors need not be ſo ſtrict as a Plea in Bar, for it need be no more than what will ſhow, that though the Plaintiff was once accountable, yet that he ought not now ſo to be.

What is a good Diſcharge before Auditors.

5. It is a good Diſcharge before Auditors, that he was robb'd, without Default or Negligence. *Co. Litt.* 89. 2 *Mod.* 100. *Mo.* 46. 4 *Co.* 84.

That he was robb'd.

6. It is a good Diſcharge to ſay, that the Defendant gave a Bond, or enter'd into a Statute to the Plaintiff, for ſo much, which was the Money receiv'd; and that he gave him ſo much in Satisfaction of the Profits. 30 *Ed.* 3. 4. 1 *Rolls Abr.* Title *Account* 125. *Pl.* 11. 123 *Pl.* 4.

That the Defendant gave a Bond.

7. It is not a good Diſcharge for a Factor to ſay, that the Goods were *bona peritura*, and therefore that he ſold them upon Credit, otherwiſe they would have been ſpoil'd. 1 *Bulſtr.* 101. For a Factor can't ſell upon Credit, without a ſpecial Commiſſion ſo to do.

What a good Diſcharge for a Factor.

8. An Action of Account againſt *Cheeke*, who held Stakes upon a Wager; there was a Judgment, *quod Computet*, and he pleads in Diſcharge before Auditors, that he deliver'd the Money to the other that won the Wager. The Plaintiff replies, that there was foul Play, and not according to the Articles; held, that the Iſſue was well join'd. *Bainton* and *Cheeke*. *Sti.* 353. Tho' the Plea before the Auditors was clearly an ill Plea.

What held a good Iſſue.

9. A Plea before the Auditors, that he receiv'd the Money to deliver over to another, and that he did ſo, was held to be an ill Plea before Auditors, though it had been a good Bar of the Account. *Kirk* and *Lucas*. *Sti.* 430. But if it had been pleaded in Bar, it muſt have been pleaded without a Traverſe; or if any Traverſe had been taken, it muſt have been without that, That he was his Receiver in any other Manner; for a Traverſe without that, that he receiv'd it to make an Account any otherwiſe than in this Manner, was held ill. 2 *Brownl.* 308. *Rutlage* againſt *Clark*.

What is not a good Diſcharge before Auditors.

10. The Auditors are made the Judges of the Account, and 'tis in their Breaſt to give Time to the Parties. *Sti.* 464. *Le Gay*.

11. Where Two Perſons are adjudged jointly to Account, if one diſcharges himſelf upon the Account, it ſhall be a Diſcharge to the other; and if he be charged by the Account, it ſhall be a Charge upon the other. 1 *Rolls Ab.* 173. *Pl.* 3.

12. I ſhall obſerve the ſame Method as to the Diſcharge before Auditors, as I did in Pleas in Bar; and therefore, what ſhall be a good Diſcharge, and what not.

Other Caſes concerning Diſcharges before Auditors.

See *Palm.* 512. 1 *Leon.* 219. 1 *Roll. Abr.* 2. *Pl.* 5. 2. *Rol. Abr.* 567. *Pl.* 2. *Br. Account* 10. *S. C.* 9 *E.* 4. 406. *Br. Accounts* 55. *S. C.* *Fitz.* 11. *S. C.* *Co. Litt.* 89. 2 *Mod.* 100. *S. P.* *Co. Litt.* 89. *S. P.* *Moor* 46. 2. *S. P. per Poph.* 4 *Co.* 84. 2 *Keb.* 761. 1 *Roll's Abr.* 2. *Pl.* 4. 46 *E.* 3. *Accompt* 40. 2 *Mod.* 101. 1 *Bulſ.* 104. *Mich.* 9 *Car.* *B. R.* *Intratur Mich.* 8. *Rot.* 186. 41 *E.* 3. *Account* 33. *Curia* 1 *Leon.* 219. *S. P.* 41 *E.* 3. 9. *b.* 1 *Brownl.* 25. *Fitz. Account* 23. *S. C.* *Br.* 10. *S. C.* *Br. Account* 66. 1 *Rol. Abr.* 123. *Pl.* 3. *S. C.* 30 *E.* 3. 4. *b.* 23. 2 *Rich.* 2. *Account* 45. 2 *Leon.* 196. *Godb.* 58. *Dyer* 21. *S. P.* 6 *Rich.* 2. *Account* 47. 1 *Rol. Abr.* 124. *Pl.* 4. *Br. Account* 66. *S. C.* *Hut.* 133. *Stil.* 410. *S. P.* 430. *S. P.* 3 *Eliz.* 196. *b.* 43. *Stil.* 358. *Trin.* 39 *Eliz.* *B. R.* *Br. Account* 79. 41 *E.* 3. 4. 2 *Mod.* 100. *Latch* 59. *Yelv.* 202. 1 *Bulſ.* 103, 104. *Paſch.* 40. *Eliz.* *Cro. Eliz.* 830. *Trin.* 4 *Car.* *Cro. Car.* 116. *Het.* 114. *S. C.* 115. *Richardſon.* *Raymond* 57. *Mich.* 14 *Car.* 2. 1 *Keb.* 354. 395. *S. C.* *Trin.* 28 *Car.* 2. 2 *Mod.* 100. 1 *Bulſ.* 102. *S. P.* 1 *Bulſ.* 101.

Ow. 28 *S. P.* *Cro. Jac.* 178. *S. P.* 2 *Leon.* 46. *S. P.* *Br. Account* 26. *S. C.* *Fitz. Account* 27. *S. C.* *Br.* 26. *S. C.* 42 *E.* 3. 6. 25. 42 *E.* 3. 24. *Fitz. Account* 21. *S. C.* *Br.* 31. 12 *H.* 4. 18. 13 *Rich.* 2. *Account* 51. *Br. Account* 13. *S. P.* 6 *Rich.* 2. 47.

1 *Brownl.* 25. *S. P.* 41 *Edw.* 3. 3. 1 *Syd.* 159. 1 *Keb.* 577. *Fitz. Account* 23. *S. C.* *Br.* 10. *S. C.* *Moor* 188. *Pl.* 335. 2 *Leon.* 76. 41 *Edw.* 3. 13.

Laſtly, Of the ſecond Judgment, and the other Proceedings therein, that the Parties may have Juſtice according to the Wiſdom of the Laws of England.

Of the Second Judgment, to pay the Money.

1. The Second Judgment is to charge the Defendant to pay to the Plaintiff what the Auditors have adjudged is due upon the Account. So it is ſaid in the 19th of *H. 6. Pl.*

If Judgment reverſed by Error.

2. In Account the ſecond Judgment only is reverſed, and a *Capias ad Computandum* ſhall iſſue againſt the Defendant, to bring him to Account upon the firſt Judgment. *Hill.* 43 *Eliz. Cro. Eliz.* 806.

To detain and keep the Defendant quouſque.

3. If a Man be found in Arrearages upon his Account, and the Party Plaintiff do arreſt him in *London* for thoſe Arrearages, then he may ſue a Writ in Chancery, directed unto the Sheriff, rehearſing the whole Matter, commanding the Sheriff to detain and keep him in Priſon until he hath ſatisfy'd and paid ſuch Arrears; this muſt be underſtood of an Account of Debt. And though a Man brings an Action of Debt for the Arrears of the Account before Auditors, and hath the Party arreſted, yet he hath Liberty to anſwer thereto. 19 *H.* 6. 4. *F. New Natura Brev.* 270.

If he pleads againſt him. Scire Facias. Defendant diſmiſs'd.

4. If the Defendant pleads in Bar, and it is found againſt him, he ſhall be awarded to the Fleet *Inſtanter.* 39 *E.* 3. 35. But if the Plaintiff there leaves him without accounting, he may have a *Scire Facias* againſt the Plaintiff; and if the Plaintiff does not come at the Day, the Defendant ſhall be diſmiſs'd, and thereby the Plaintiff hath both the Advantage of the Judgment, and by *Aynſham* of the Writ alſo. 18 *E.* 2. *Br. Account* 123. 1 *H.* 71. But if he will not account, the Plaintiff may pray Judgment according to the Account. 14 *E.* 3. *B. Account* 109.

Judgment according to the Account. Plea, never was Bailiff. Judgment.

5. *W.* ſued *W.* in Account as his Bailiff, to his Damage of One Hundred Pounds; the Defendant pleaded he never was his Bailiff; it was found againſt him, and Judgment given, That he ſhould render an Account, and at the Day the Defendant made Default; then the Judgment was *Ideo conſideratum eſt per Curiam quod querens recuperet verſus predictum defendentem* 40 *l.* 10 *s.* upon this a Writ of Error was brought by the Defendant, for that the Court had given Judgment of the Value without enquiring of the Value; and Two Juſtices held, That the Judgment muſt be given of what the Plaintiff had counted. *P.* 19. *Jac. Winch* 5.

Where ſubject to Two Actions.

6. If Money be deliver'd by *A.* to *B.* to be deliver'd to *C.* *B.* will be ſubject to Two Actions of Account conditionally. *Hob.* 36.

Money deliver'd to the Servants of another for Relief of Plaintiff.

7. *A.* gave 100 *l.* for the Relief of *B.* and *C. dum ſola fuit*, and deliver'd the ſame to *J. W.* who was Servant to one *Mountford*, to deliver to *R.* the Plaintiff, for the Relief of the ſaid *B.* and *C.* and he in Account before Auditors ſhewed, that he had ſpent the ſaid 100 *l.* for the Maintenance and Relief of the ſaid *B.* and *C.* and it was found againſt him, and the Plaintiff had Judgment, notwithſtanding theſe following Exceptions. *Cro.* 1 *Fo.* 82. *Robſert* and *Andrews* & *ux* & *al'* *Lut.* 47. the ſame Caſe.

Charg'd as Receiver.

Firſt, That he was charg'd to be Receiver to Account, whereas he received it for their Relief.

Bailee could have no other Writ.

Second, That he was not accountable, unleſs he had not expended it in their Maintenance, therefore that the Plaintiff ſhould have declared ſpecially, but held good; for they to whoſe Uſe the Bailment was made, could have no other Writ. 1 *Cro.* 83.

Receiv'd by the Hands of Waſe, who was only a Servant to M. He had only the Poſſeſſion for a particular Purpoſe.

Third, That he is ſuppoſed to have received it by the Hands of *Waſe*; whereas the Jury found that *Waſe* was only Servant to one *Mountford*, but anſwer'd, that where the Servant doth contract, that ſhall be ſaid to be the Contract of the Maſter; but where the Servant, as in this Caſe, conveys only a Poſſeſſion, and it could not be for his Maſter's Benefit or Injury, there he ſhall not be in any wiſe conſider'd as a Servant to *Mountford*.

No Requeſt.

Fourth, That he is ſaid to be accountable on Requeſt, and agreed, no Requeſt was mention'd at the Time of the Delivery of the Money. Requeſt is implied by Law.

That the Capias was awarded in a wrong Place.

Fifth, The Writ of Account brought in *Norfolk*, and the *Capias ad Computandum* was awarded in *London*; ——— held, that it was aided by the Statute.

That he had not ſaid, that the Defendant had not expended any Part thereof.

Sixth, That the Verdict did not ſay that he had not expended the 100 *l.* or any Part thereof, but good notwithſtanding, as it is collateral to the Iſſue; otherwiſe not, as in Waſte for Twenty Oaks, there the Defendant muſt have ſaid, that he did not cut down Twenty Oaks, or any of them, but in

Debt upon a Bond, that he ſhall not do Waſte; and Breach aſſign'd, that he cut down Twenty Oaks; it is enough to plead, that he did not cut the ſaid Twenty Oaks without ſaying, or any of them.

No Original.

Seventh, It does not appear that there is any Original; held well enough; for the Plaintiff in Error having not aſſign'd the want of an Original, and the Defendant having pleaded *in Nullo eſt Erratum*, the Defendant cannot after alledge Diminution; and this Error being aſſign'd *dehors* the *Record*, the Court may write to the Common Bench to certify it.

Damages recover'd.

Eighth, That the Plaintiff had Judgment to recover Damages and Coſts, whereas it is a poſitive Law he ſhall have none in a Writ of Account, but anſwer'd that he has them not *ratione detentionis Computi*, but *ratione interplacitationis Computi*, and a Writ of Account is one of the Writs mention'd in *Magna Charta*, wherein Damages are appointed.

Where Damages given, and where not.

8. It is ſaid, That Damages are not recoverable in Account againſt a Bailiff or Receiver, but that muſt be underſtood only *pro detentionis Computi*. *Jenkins Cent.* Caſes 23. yet ſee 3 *Leon.* Caſe 99. and in Book of Entries 17. where Damages were given. 2 *H.* 7. 13. 10 *H.* 6. 18. 21 *H.* 6. 2. *Fitz. Account* 4. But in *Mich.* 29 *Eliz. B. R.* it was held, that the Plaintiff ſhould not recover Damages expreſly, but that the Court ſhould give *quoddam incrementum* to the Amount of the Arrearages. 3 *Leon.* Caſe 238. Stat. 13 *Eliz. cap.* 4. 39 *Eliz. cap.* 7. *More*, Caſe 847. *Croo.* 1 *Fo.* 82. *Robert* and *Andrews*, it was held, that Damages ſhall be given in Account *ratione interplacitationis Computi*, but for the Pleading, Proceeding and Judgment in this Action, ſee much more in *Roll*'s Abridgment, *Account* 125. *L, M, N, O.*

9. A Judgment in Account, as Receiver, is no Bar to an Action of Account as Bailiff. 2 *Lev.* 127. But a Bailiff cannot be charged as Receiver, nor a Receiver as Bailiff, becauſe that he might be twice charg'd. 1 *Roll's Abr.* 118. *H. Pl.* 1. 3.

Of the ſeveral Executions.

10. The Execution in this Action againſt a Bailiff is by *Levari Facias*, or *Fieri Facias*, within the Year; after a *Scire Facias*, alſo *Capias ad Satisfaciendum* and *Elegit*; and if he be in Arrear he may be committed by the Auditors. *Co.* 3. 12. 33 *H.* 6. 49. *Weſtm.* 2 *cap.* 18. 11. 45. *Co.* 8. 119. And ſo it is againſt a Receiver, and the ſame Execution is againſt the Guardian in Socage, but the Accountant to the King is to be impriſon'd, and all his Goods and Lands to be in Execution. *Coke* 3. 12. *Dyer* 234. See more in *More*, Caſes 1188. *Crook* 1. 2. 3. *Godb.* 43. *Dyer* 202. *Owen* 20. *Winch* 5. *Dyer* 265. *Brownlow* 1. 25. *Bulſtrode* 1. 103, 2. 256. *Dyer* 25, 151, 196. The Statute of *Marlebridge*, *cap.* 23. 52 *H.* 3. *Weſtm.* 2. *cap.* 11. 13 *E.* 1.

Account againſt Husband and Wife. And of the Judgment.

11. Account was brought by Husband and Wife, Executrix of *J. S.* to render an Account as Bailiff to *J. S. ex quacunque cauſa & Contractu ad utilitatem* of *J. S.* and one *W. P. de quibuſdam Merchandizis* of the ſaid *J. S.* of the Third Part of 38 Tuns of Wine, which the Defendant and *J. S.* occupy'd to their common Profits, and were committed to the Defendant's Hands by Aſſent of *J. S.* and *W. P.* for their common Profits, the Defendant pleaded *Ne unques Receiver*, and it was found againſt him, and moved in Arreſt of Judgment, That he was charged as general Bailiff; whereas it is approved he was Bailiff *ex quacunque Cauſa*; they demanded a Third Part of the Goods, or an Account of them, and the other ought to have been join'd in the Account, but the Court was againſt the Defendant in both Points; and it was held, 1. That he might demand an Account of the Third Part. 2. That he might have the Account alone, without joining his Companion with him. 3. That it being brought by the Husband and Wife as Executrix, was well brought. *Crook* 2. *Fo.* 410. Dr. *Hackwell* and *Enſtman*'s Caſe, 1 *Roll. Rep.* 421.

Account by Adminiſtrator durante Minori Ætate.

12. In *Wells* and *Some*'s Caſe, *M.* 7. *Car. B. R. Account* was brought by an Adminiſtrator *durante Minori Ætate* of the Defendant, as Bailiff of a Manor, found for the Plaintiff; and it was not ſhew'd that the Infant was within the Age of Seventeen, yet it was held good, and ſaid, it ſhall be intended, unleſs it be ſhew'd he was above Seventeen Years. 3 *Croo. Fo.* 240.

13. An Action brought upon Account for ſeveral Sums, the Defendant pleads, that as to all except Ten Pounds *Ne unquez Receiver*, upon which Iſſue was join'd, and the Plaintiff had a Verdict; held in Arreſt of Judgment, to be an immaterial Iſſue; and a *Venire de Novo* was awarded. *Pendarvis* againſt *Dawks. Sti.* 105.

Againſt Adminiſtratrix.

14. Account againſt Adminiſtratrix; Judgment *quod Computet*; ſhe dies; Husband brought a Writ of Error; held that it would not lie, becauſe the Plaintiff would then be without Remedy; *Scire Facias* lies againſt the Executor, and he ſhall account. *Sti.* 290.

15. The

Where no Nonſuit.

15. The Defendant was adjudged to account, and a *Capias* iſſued againſt him *ad Computandum*; he appear'd before Auditors at a Day certain, and enter'd into Account, and the Auditors aſſign'd them to appear at another Day; at which Day the Plaintiff did not proceed; and it was held there could not be a Nonſuit in this Caſe, for it is after Judgment, but a Diſcontinuance only ſhall be enter'd; and if the Plaintiff will after proceed, he may have a *Scire Facias* upon this Record *ad Computandum*. *Croo.* 1 *Part Fo.* 19. *Anonymus.*

REFERENCES to Precedents

In Account.

COUNT againſt a Receiver by other Hands. Win. Entr. f. 1. 6.

The like Ro. Entr. 122. by the Hands of the Plaintiff and another. Br. R. 2. Br. Red. 7. 8. 1 Bro. 116.

Againſt a Bailiff and Receiver of Lands and Tenements, Rents and Profits of all the Eſtate of the Plaintiff, both real and perſonal. Re. Dec. 1.

By the Royal African Company againſt one as Bailiff and Receiver to their Company in London. B. 2. R. f. 1.

Againſt a Bailiff and Receiver. Tho. 96. Cl. Aſſ. 51. 53. 54. Read's Dec. 4.

Againſt a Bailiff only to render an Account. Tho. ibid. Ro. Entr. 4. Rob. 23.

Upon an Inſimul Computaſſet. Ro. Entr. 5. 120, 121. with Satisfaction of Part. Ibid.

The like for Part, and a Mutuatus for Reſidue. Idem 122.

By a ſurviving Adminiſtrator (with the Will annex'd) againſt a Bailiff of Goods, and Receiver of Foreign Money. Vid. Entr. 75. Rob. Entr. 121.

Againſt Four Defendants, where Two are Outlaw'd. Ro. Entr. 5.

Againſt a Bailiff, as well for the Profits ariſing from the Office of Conſtable of a Caſtle, as for the Cuſtody of all Foreſters, Parkers, Warreners, and of other Places belonging to the ſame Office, by the Hands of another to Merchandize and make Profit thereof for the Plaintiff. Br. R. 3. 1 Bro. 118.

By a Husband and Wife againſt a Bailiff of the Meſſuage and Lands, and Receiver to his Wife when Sole. Br. R. 6. Idem 9.

For an Infant by his next Friend againſt a Bailiff. 1 Bro. 114, 118.

Againſt a Receiver of Money receiv'd to be paid to Servants for their Salaries. Bro. Red. 7.

Againſt a Receiver upon a Writing. Ro. Entr. 119. To be laid out to the Benefit of the Plaintiff for Rent Arrear. Ro. Entr. 120.

Againſt a Receiver of divers Goods and Chattels, equally to be divided between the Plaintiff and Defendant. Bro. R. 6.

By Executor againſt a Bailiff of Goods. Vid. Entr. 76. The like againſt a Bailiff, Receiver, or Factor beyond Sea. Ro. Entr. 4. The like againſt a Bailiff having the Care and Adminiſtration of divers Goods to Merchandize. Ibid. 123. 2 Bro. 38. Bro. R. 9. 11. Cl. Aſſ. 59. Red. Dec. 3.

By a Feme Sole, by her Guardian againſt a Receiver, for the Profits of Three Parts of a Ship, which belong'd to the Plaintiff and his Brother deceaſed. Ro. Entr. 115.

For Money lent to render an Account. Ro. Entr. 120.

Account againſt an Attorney. Ibid.

Receiver by Bill for Money receiv'd at one Day. Ibid. Win. Entr. 1.

Bar in Account.

Againſt Defendant, as Receiver of Tithes, by the Hands of A. R. Knight, Defendant pleads that he was not Receiver, and the Jury brought a ſpecial Verdict, that R. was indebted to H. in 200 l. and H. appointed D. a Receiver, and requeſted D. to borrow 200 l. for him of A. to pay H. and D. and R. became bound to J. for the ſaid 200 l. Afterwards D. appointed his Wife to pay H. the ſaid 200 l. ſo borrow'd; and if that be a Receipt by the Hands of the Defendant, the Jury doubted; adjudg'd for D. Wi. f. 6.

That he never was Receiver, and Judgment againſt Defendant by Nill dicit, that he ſhould account; Auditors was aſſign'd by the Court; divers Iſſues upon that Account, and Demurer to the Demand, and Nill dicit thereupon, and Confeſſion to Four others; and the Jury find that the Defendant had diſburs'd 78 l. which is 18 l. more than the Plaintiff demands by his Account, and ſo the Plaintiff had no Cauſe of Action; as in Ridaway's Caſe. Wi. Entr. f. 1. Cl. Aſſ. 79. Ro. Entr. 120. Han. 165. Pl. Gen. 212.

Defendant own'd himſelf to be Bailiff to the Plaintiff, and had the Care and Management of the Merchandizes in the Declaration; Judgment, that he ſhould account, and an Account was made before Auditors. Cl. Aſſ. 58, 59, 60.

That he render'd a full Account before Auditors, and a Demurrer thereto. Vid. 78. The like with Replications and Iſſues thereon. Br. R. 5, 6. Cl. Aſſ. 52, 56, 57, 115. Ro. Entr. 122, 123. Pl. Gen. 213, 214. 1 Bro. 117. San. 105. Han. 105.

That after an Account made up, he paid ſuch a Sum. Han. 204, 205.

Confeſs'd and avoided by rendring a final Account. Han. 105.

No ſuch Account. Pl. Gen. 212.

That he was never Bailiff. Han. 83, 105. Cl. Aſſ. 83, 123, 124. Pl. Gen. 112. Ro. Entr. 4. 1 Bro. 114, 116. Ro. Entr. 4, 5, 115. Read. Decl. 23. 2 Bro. 38. Vid. 76. Bro. R. 9.

That he did not account before the Auditors. Han. 104.

Defendant in Account againſt Receiver, after waging Law, and an Eſſoin thereupon, pleaded that he never was Receiver per Patriam. 2 Town. Judg. 17. Ro. Entr. 120. Win. Ent. 7.

That the Defendant was Bailiff to the Plaintiff, by which he receiv'd Monies; and Traverſe, that he was Receiver, to render an Account. Replication, That the Defendant was Receiver prout, &c. and Iſſue thereupon. Br. R. 2, 3.

That the Defendant was Receiver to the Plaintiff at another Time than in the Declaration, and that for that Time he accounted before Auditors, and Traverſe the Time in the Declaration. Replication by maintaining the Declaration, and Iſſue thereupon. Br. R. 7.

Againſt a Defendant, as Receiver of a Sum of Money on a certain Day for the Plaintiff, by the Hands of H. Bar, proteſting he never was Receiver, but was a common Carrier, and receiv'd the Money to be paid to J. to whom the Defendant paid it, and an Iſſue thereupon. Br. R. 8.

The Plaintiff in proteſting that he did not receive the Money, for Plea ſaid, that the Defendant had not paid it, as alledg'd in his Plea. Rejoinder, that he paid it, and Iſſue thereupon. Cl. Aſſ. 55.

Account for Goods that they came to the Hands of the Defendant, who pleads, that no Goods came to his Hands. 1 San. 100. Replication, that a Silver Chalice came to his Hands.

Defendant pleads, that he laid out the Monies in Reparations, and other neceſſary Charges. 1 San. 45.

That the Defendant receiv'd the Goods of the Plaintiff to Merchandize, and was robb'd. Replication, That he was not robb'd. Ro. Entr. 123. and Iſſue. The like Plea before Auditors, of Money receiv'd, to be carried from one Place to another. Ro. Entr. 119.

That the Defendant receiv'd 100 l. to lay out in Traffick, and made a juſt Account in Writing, by which the Plaintiff had gain'd 62 l. per Cent. which the Defendant offer'd to pay, and is yet ready, &c. Ro. Entr. 119.

Of Two Sums receiv'd at Two certain Days. As to the Money receiv'd the Firſt Day, the Plaintiff and one M. were Partners in merchandizing, and that he receiv'd the Money to pay it to M. to whom he did pay it. The like Plea to the Second Sum receiv'd. Replication, proteſting that the Plaintiff and M. were not Partners, for Plea, That the Defendant did not pay. Br. R. 8. Rejoinder and Iſſue, That he did pay.

To a Count by a Merchant againſt his Factor, as Bailiff of the Goods, to merchandize and make Profit thereof for the Plaintiff. Bar, by the Cuſtom of Merchant Adventurers upon Loſs of Merchandizes. Replication, by a Traverſe of the Cuſtom. Rejoinder, and Iſſue upon the Traverſe. Br. R. 9, 10.

Proteſt, &c. for Plea, That as to Part, that the Plaintiff was indebted to the Defendant in 120 l. and requeſted him to pay to J. for the Plaintiff 358 l. and at that Time the Plaintiff deliver'd to the Defendant Part of the Goods to ſell, and the Money ariſing therefrom to retain a Part towards Payment of the ſaid 478 l. The Defendant ſold the Goods for 386 l. which he retain'd. And as to the Reſidue, pleaded a Foreign Attachment. Br. R. 11.

That the Plaintiff diſcharged the Auditors from auditing the Account. Replication, That he did not diſcharge, and Iſſue. Han. 104. Pl. Gen. 213.

Bar by pleading Infancy in Account. Replication That he was at full Age. Bro. Vad. 465.

Bar by the Statute of Limitations. Replication, That the Account concern'd the Trade of Merchandize. Vi. 76.

The Defendant prays an Allowance of the Payment of Money and Expences; prays alſo an Allowance of the

Surpluſage; the Plaintiff confeſſeth Part of the Allowance; and as to the Reſidue ſays, that the Defendant did neither pay or deliver prout, &c. And Iſſue join'd thereupon. 2 Bro. 40.

Pleas of Diſcharge before Auditors.

As to 23 l. of 100 l. that he paid the Plaintiff. The like Plea as to 17 l. thereof, and as to 63 l. the Reſidue, he paid A. by the Plaintiff's Appointment. Replication, that he did not pay, and Three ſeveral Iſſues. Br. R. 4.

That he paid Money for carrying of Cloth. An Allowance thereof by the Plaintiff. Bro. 10.

Upon a Judgment, that the Defendant ſhould account. Auditors aſſign'd by the Court, by the Aſſent of the Plaintiff, who appointed a Day. Bail for the Defendant, who at the Day deliver'd the Account to the Auditors, and pray'd an Allowance thereof, viz. for Money, for Meat, Drink, Waſhing and Lodging, and other Things expended and paid for the Plaintiff. Replication, that the Defendant did not pay, and Iſſue. 1 Bro. 115.

Upon a Judgment to account, Auditors are aſſign'd, who appoint a Day. Bail for the Defendant. Auditors reported to the Court, that 'twas a difficult Account. A Day further is given to the Auditors, they deliver their Account into Court, which follows in theſe Words, &c. Defendant prays an Allowance of the Money paid and expended. Replication as to Part, the Plaintiff's Allowance; as to the reſt, Non ſolvit. 2 Bro. 38.

Account was made, and by the Auditors deliver'd into Court, which follows in theſe Words, &c. Defendant diſcharges himſelf of the Money receiv'd, and pleads a general Releaſe in Diſcharge. Special Demurrer thereto. 1 Bro. 117.

Upon a Judgment to account, Defendant ſurrenders himſelf, and is committed to the Marſhal. Auditors aſſign'd, who appointed a Day. Bail for the Defendant. Auditors produc'd the Account in Court, the Tenor whereof follows in theſe Words, &c. Defendant pleads ſeveral Payments, for which he prays an Allowance. Replication as to all, that he did not pay, &c. and ſeveral Iſſues. Ven. Fa. awarded. Half to be Engliſhmen, and Half Foreigners. Ro. Entr. 116.

The Defendant acknowledges the Action, and Auditors are aſſign'd, who deliver the Account into Court, by which the Defendant charges himſelf with the Money receiv'd for the Goods ſold, and prays an Allowance out of the Money, Part thereof the Plaintiff allow'd, and the other Part diſallow'd. An Iſſue thereupon; and for the Reſidue, the Defendant pleaded the Cuſtom of Merchant Adventurers upon Loſs of Merchandizes. Replication by Proteſtation, &c. and traverſes the Cuſtom; Iſſue thereupon. Br. R. 9.

Defendant, upon a Judgment to account, is taken upon a Ca. Sa. and committed to the Fleet. Auditors aſſign'd, who prefix a Day. Bail for the Defendant. Account was made in theſe Words, &c. Defendant is convicted of 100 l. Bar, that he paid 37 l. thereof to the Plaintiff, and 63 l. Reſidue paid to A. by Plaintiff's Appointment. Replication, that he did not pay it; and a Venire Facias awarded. Br. R. 3, 4.

Defendant was convicted of 100 l. receiv'd by the Hands of G. 100 l. by T. and 20 l. by J. --- Bar, that he paid 70 l. to A. and T. and 50 l. to P. by the Appointment of the Plaintiff. The like Plea of 11 l. and 6 l. paid. And as to the Reſidue, that the Plaintiff was indebted to J. in 100 l. and J. alſo indebted to Defendant; and the Plaintiff and Defendant agreed, that the Defendant ſhould retain 100 l. which he retain'd by Plaintiff's Appointment. Replication, that he did not pay the ſaid ſeveral Sums; and as to the 100 l. did not retain it by Plaintiff's Appointment. Iſſue thereupon. Ro. Entr. 116.

And as to 5 l. demanded by the Defendant for Labour, about the Adminiſtration of the Goods: The Auditors are reſpited until Iſſue ſhould be try'd between the Parties. Br. R. 10.

That he fully accounted for Part. Acknowledged the Action for Part, and deny'd that he was Receiver as to the Reſidue. Cl. Aſſ. 56. Judgment, that the Defendant ſhould account. Idem 57.

The Stile of an Account from a Guardian of the Profits of a Meſſuage. 1 Bro. 115. The like from a Bailiff of Goods receiv'd. 2 Bro. 39. The like of a Receiver for the Time, that he was Receiver of the Monies of the Plaintiff. Ro. Entr. 116.

Audita Querela.

PLEAS before our Sovereign Lord the King, at **Weſtminſter**, of **Hillary** Term, in the Sixth Year of the Reign of our Sovereign Lord, **William** the Third, King of **England**. Roll 309.

Writ of Audita Querela. 4 Mod. 306.

England, (to wit) **OUR** Sovereign Lord the King hath ſent to his Juſtices, aſſign'd to hold Pleas before himſelf, his Majeſty's Writ under the Great Seal of *England*, in theſe Words; '*William* the Third, by the Grace of God, of *England*, *Scotland*, *France* and *Ireland*, King, Defender of the Faith, *and ſo forth*, to our Juſtices aſſign'd to hold Pleas before us, Greeting. We having receiv'd Information, by the grievous Complaint of *Anne Lampton*, Widow, Adminiſtratrix of the Goods and Chattels, which were the Property of *Robert Lampton*, Eſq; deceas'd, That whereas one *Lucas Collinwood*, not long ſince, (*that is to ſay*) in *Eaſter* Term, in the Thirty-fourth Year of the Reign of our Predeceſſor *Charles* the Second, late King of *England*, in the Court of the ſaid late King, before the King himſelf, by a Judgment of the ſaid Court, had recover'd againſt the ſaid *Robert Lampton* and one *Edmond Craiſter*, in the County aforeſaid, Eſq; and *Robert Lampton*, of *Newnham*, in the aforeſaid County, Gent. Four Hundred Pounds for a Debt, and alſo Forty Shillings, which were in the ſame Court adjudged to the ſaid *Lucas*, for his Damages which he had ſuſtain'd, as well by Occaſion of detaining his ſaid Debt, as for his Expences and Coſts by him laid out about his Suit for Recovery of the ſame, whereof they were convicted, as by the Record and Proceedings thereof, now remaining in our Court before us at *Weſtminſter*, may plainly appear: And afterwards the ſaid *Robert*, in the Life-time of the ſaid *Edmond*, (*that is to ſay*) on the Firſt Day of *November*, in the Firſt Year of the Reign of our Predeceſſor *James* the Second, late King of *England*; and the ſaid *Edmond* ſurvived the ſaid *Robert*, by whoſe Death, and by the Laws of *England*, the Goods and Chattels of the ſaid *Robert*, at the Time of his Death in the Hands of whatſoever Adminiſtrator or Adminiſtrators unadminiſter'd, became altogether diſcharged from the Debt and Damages aforeſaid, as the ſame *Anne*, by whatſoever Ways and Means ſhall be thought moſt proper by this Court, is ready to make appear: Neverthele ſs, the aforeſaid *Lucas*, contriving and intending unjuſtly to vex, and greatly to injure the ſaid *Anne*, by Colour of the Judgment aforeſaid, not long ſince, and after the Death of the ſaid *Robert* (*that is to ſay*) in the Term of the Holy *Trinity*, in the Fifth Year of our Reign, and of our dear Conſort, the Lady *Mary*, late Queen of *England*, the ſaid *Lucas* proſecuted out of our ſaid Court, before us and the ſaid Lady *Mary*, our late Queen, at *Weſtminſter*, our Writ of *Scire Facias* againſt the ſaid *Anne*, as Adminiſtratrix of the Goods and Chattels

Judgment recover'd againſt Two Defendants.

Scire Facias ſued out againſt Adminiſtrator of the Deceaſed.

Chattels of the ſaid *Robert*, of and upon the Judgment aforeſaid, directed to the then Sheriffs of *London*, by which ſaid Writ reciting, that whereas the aforeſaid *Lucas* heretofore, in the Court of our ſaid late Predeceſſor, King *Charles* the Second, before the King himſelf, by Bill, without any Writ of the ſaid late King, and by the Judgment of the ſame Court, had recover'd againſt the ſaid *E. C.* otherwiſe call'd *E. C.* of *C.* in the County aforeſaid, Eſq; and the ſaid *R. L.* otherwiſe call'd *R. L.* of *Newnham* in the County aforeſaid, Gent. the aforeſaid Four Hundred Pounds for a Debt, and alſo the aforeſaid Forty Shillings, for his Damages which he had ſuſtain'd by Occaſion of detaining that Debt, as alſo for his Expences and Coſts by him laid out in carrying on his Suit for a Recovery of the ſame, whereof they were convicted, as appeareth of Record, reciting alſo and ſuggeſting, that the aforeſaid *Edmond*, the Second Day of *July*, in the Second Year of the Reign of our ſaid Predeceſſor the late King *James* the Second, died at *London* in the Pariſh of the Bleſſed *Mary of the Arches*, in the Ward of *Cheap*, and the aforeſaid *Robert* ſurvived him: And that afterwards, (*to wit*) the Firſt Day of *April*, in the Second Year of the Reign of our Self, and our late Queen aforeſaid, the aforeſaid *Robert* died Inteſtate at *London* aforeſaid, in the Pariſh and Ward aforeſaid; and that after his Death, Adminiſtration of all and ſingular the Goods and Chattels, Rights and Credits which were the Property of the ſaid *Robert* at the Time of his Death, were in due Form of Law granted to the ſaid *Anne Lampton*, (the ſaid Debt and Damages being then unſatisfy'd to the ſaid *Lucas*) and that the aforeſaid *Lucas* had implored us and our ſaid late Queen, to grant him proper Relief in that Particular; and We, and Our ſaid late Queen, Willing that whatſoever was juſt ſhould be done in that Caſe, We by the ſaid Writ therefore commanded the ſaid Sheriffs of *London*, that by honeſt and lawful Men of their Bailiwick, they ſhould cauſe it to be known to the ſaid *Anne*, that ſhe was to have been before us and our ſaid late Queen on *Tueſday* next after Fifteen Days of the *Holy Trinity*, then next following, to ſhew if ſhe had or knew any Cauſe why the ſaid *Lucas* ought not to have his Execution for the Debt and Damages aforeſaid, of the Goods and Chattels of the ſaid *Robert* unadminiſter'd by the ſaid *Anne*, if ſhe thought proper ſo to do; and further to do and receive whatſoever the ſaid Court, before us and our ſaid late Queen, ſhould then conſider of, under the Circumſtances of the ſaid Caſe, and that then they ſhould have there the Names of thoſe by whom they ſhould ſo cauſe it to be known to her, and likewiſe that Writ, *and ſo forth*, at which Day came the ſaid *Lucas* into our ſaid Court before us and our ſaid late Queen at *Weſtminſter*, in his proper Perſon; and the ſaid Sheriffs of *London* then return'd to us and our ſaid late Queen, that the ſaid *Anne* had not any Thing in their Bailiwick, by which they could cauſe to be known unto her the Purport of the ſaid Writ, nor was ſhe to be found in the ſame, and the ſaid *Anne* came not: Therefore, as before, the ſaid Sheriffs of *London* were by the ſame Court commanded, that by honeſt and lawful Men of their Bailiwick, they ſhould cauſe it to be known to the ſaid *Anne*, that ſhe was to be before us, and our ſaid late Queen at *Weſtminſter*, on *Tueſday* next after Three Weeks of the Holy Trinity then next

Sheriffs return a Nichil.

An alias Scire Facias, awarded.

following, to ſhew Cauſe in Form aforeſaid, *and ſo forth*, if *and ſo forth*, and further, *and ſo forth*, the ſame Day was given to the ſaid *Lucas*, by the ſame Court, before us and our ſaid late Queen, then to be there, *and ſo forth*, at which Day came in his proper Perſon, the ſaid *Lucas* into the ſaid Court, before us and our ſaid late Queen, and the ſaid Sheriffs of *London*, as before returned to us: That the ſaid *Anne* had not any Thing in their Baliwick, whereby, or by means whereof, they could make known unto her the Purport of the ſaid Writ, nor was ſhe to be found in the ſame; and the ſaid *Anne*, (altho' ſolemnly exacted) at the ſame Day, came not, but made a Default. Wherefore it was then and there conſidered by the ſaid Court, before us and our ſaid late Queen, that the ſaid *Lucas* ſhould have an Execution for the Debt and Damages aforeſaid, to be levied of the Goods and Chattels of the ſaid *Robert*, at the Time of his Death unadminſter'd by the ſaid *Anne*, as by the Records and Proceedings thereof, now remaining in our Court before us at *Weſtminſter* may alſo plainly appear. And altho' the ſaid *Anne* was never ſummon'd in the aforeſaid Plea, by Virtue of the ſaid Writ, to ſhew Cauſe why the ſaid *Lucas* ought not to have ſuch Execution againſt her, nor hath ſhe appeared in ſuch Plea. And altho' the ſaid *Anne*, and her Goods and Chattels, ought not of Right to have been chargeable to ſuch Execution, yet the ſaid *Lucas* doth reſolve and threaten, that by ſuch Execution, he will levy the Debt and Damages aforeſaid, of the Goods and Chattels aforeſaid, to the great Damage and Injury of the ſaid *Anne*; and contrary to the Laws and Cuſtoms of our Kingdom of *England*. Wherefore in as much as the ſaid *Anne*, hath beſought us to provide her proper Relief in this Caſe, we being unwilling that the ſaid *Anne* ſhould any ways be injured, and willing, that what is Right and Juſt ſhould be done to her in this Caſe: We command you, that in Order to hear the Complaint of the ſaid *Anne*, you call before you the aforeſaid Parties, and ſuch others, as it ſhall ſeem meet to you to convene; and having heard the aforeſaid Parties and their Reaſons, you cauſe to be done full and ſpeedy Juſtice to the ſaid Parties, which of Right, and according to the Laws of our Kingdom, remaineth and ought to be done, *and ſo forth*.

The Sheriff returns a Nichil.

Execution adjudged upon the Sci. Fa. by Default.

Altho' the Adminiſtrator was never ſummoned to ſhew Cauſe, nor ever did appear.

The Plt. Gravamen.

The Command of the Writ.

Afterwards (*to wit*) on *Wedneſday* next after fifteen Days of *St. Hillary*, this ſame Term, comes the ſaid *Anne Lampton*, before our Sovereign Lord the King at *Weſtminſter*, by *N. H.* her Attorney, and ſaith, That the aforeſaid *Lucas*, ought not to have his Execution againſt her for the Debt and Damages aforeſaid, to be levied of the Goods and Chattels which were the Property of the ſaid *Robert*, at the Time of his Death, unadminiſter'd by the ſaid *Anne*, becauſe ſhe ſaith that the ſaid *Lucas* heretofore, that is to ſay, in *Eaſter* Term, in the 34th Year of the Reign of our late Sovereign Lord King *Charles* the Second, in his then Majeſty's Court of King's Bench, by a Judgment of the ſame Court (*then go on*) *ſetting forth the Recovery of the Judgment in the King's Bench, the Death of one of the Defendants, the Suing out a* Scire Facias *againſt the Adminiſtrators of the Deceaſed; that the Defendant was ſummon'd to ſhew Cauſe, why there ſhould not be Execution againſt her, and the* Gravamen, *as above in the Writ, till you come to the Words*, to the great Damage and Grievance of the ſaid *Anne*, and contrary to the

The Declaration upon the Writ.

Demurrer.

Laws and Cuſtoms of this Kingdom of *England*, (*then go on as followeth*) and this the ſame *Anne* is ready to verifie. Wherefore ſhe prayeth the Judgment of this Honourable Court, and that the aforeſaid *Lucas* may be precluded from having any Execution whatſoever, of and upon the Recovery aforeſaid, to be levied of the Goods and Chattels of the ſaid *Robert*, unadminiſtred by the ſaid *Anne*; and that the ſaid *Anne* may be reſtored to all Things which ſhe hath loſt, and been deprived of, by Occaſion of the Award of the Execution aforeſaid, *&c.* And the aforeſaid *Lucas* came here into Court to have given an Anſwer of and upon the Premiſſes; but becauſe the Court of our Sovereign Lord the King now here before the King himſelf, know not whether the Allegations of the ſaid *Anne*, in this Particular be true or not; therefore the Sheriff of *Northumberland* is commanded to cauſe the ſaid *Lucas* to come before our Sovereign Lord the King, from the Day of *Eaſter*, in fifteen Days, whereſoever his Majeſty ſhall then be in *England*, to make Anſwer of and concerning the Premiſſes, and further to do and receive whatſoever this Honourable Court ſhould conſider of, under the Circumſtances of this Caſe; at which Day comes the ſaid *Anne* before our Sovereign Lord the King at *Weſtminſter* by her ſaid Attorney; and the ſaid *Lucas* (ſolemnly exacted) at the ſame Day, comes likewiſe by *H. D.* his Attorney, and ſaith; that the Matter contained in the ſaid Writ, and Declaration, is not ſufficient in Law, to compel the ſaid *Lucas* to make any Anſwer thereto, or to hinder his ſaid Execution from being levied of the Goods and Chattels of the ſaid *Robert*, at the Time of his Death, unadminiſtered by the ſaid *Anne*: To which the ſaid *Lucas* is under no Neceſſity, nor any ways bound by the Law of the Land to make Anſwer; and this he is ready to verifie; and therefore by reaſon of the Defect of a ſufficient Writ and Declaration in this Cauſe, the ſaid *Lucas* prayeth the Judgment of this Honourable Court concerning the ſaid Writ and Declaration, and that the ſame may be quaſhed.

Creſ. Levinz.

Joinder in Demurrer.

Continuance.

And the aforeſaid *Anne* ſaith, that the aforeſaid Writ and Declaration ought not to be quaſhed, becauſe ſhe ſaith, that the Writ and Declaration in this Cauſe, and the Matter contained therein, are good and ſufficient in Law, to preclude the ſaid *Lucas* from having his Execution againſt the ſaid *Anne*, of and upon the Judgment aforeſaid, to be levied of the Goods and Chattels of the ſaid *Robert*, unadminiſtered by the ſaid *Anne*, which ſaid Writ and Declaration, and the Matter therein contained, the ſaid *Anne* is ready to verifie and prove, as the Court ſhall think fit. And becauſe the ſaid *Lucas* hath not anſwered to the ſaid Writ and Declaration, nor yet any ways denied the Matter therein contained, the ſaid *Anne* as before, prayeth the Judgment of this Honourable Court, and that the ſaid *Lucas* may be preclued from having any Execution whatſoever, of and upon the Recovery aforeſaid, to be levied of the Goods and Chattels of the ſaid *Robert*, unadminiſtered by the ſaid *Anne*; and that all Things whatſoever that ſhe hath loſt, or been deprived of, by Occaſion of the Award of the Execution aforeſaid, may be reſtored to her. But becauſe this Court hath not yet conſidered what Judgment to give, of and concerning the Premiſſes, a Day therefore is given to the aforeſaid Parties, to appear before our Sovereign Lord the King, from the Day of the *Holy Trinity*, in three Weeks, whereſoever his Majeſty ſhall then be in *England*, to hear the Judgment of the Court, of and concerning the Premiſſes, becauſe the ſaid Court of our Sovereign Lord the King are not determined, *and ſo forth*; at which Day come the aforeſaid Parties before our Sovereign Lord the King at *Weſtminſter*, by their ſaid Attornies; whereupon all and ſingular the Premiſſes being viewed, and fully underſtood by this Court, and upon mature Deliberation thereupon had, in as much as it appeareth to the ſaid Court here, that the Writ and Declaration aforeſaid, and the Matters therein contained are Good and Sufficient in Law, to preclude the ſaid *Lucas* from having his Execution, of and upon the Judgment aforeſaid, againſt the ſaid *Anne*, to be levied of the Goods and Chattels of the ſaid *Robert*, unadminiſtered by the ſaid *Anne*. Therefore it is conſidered, that the aforeſaid *Lucas* ſhall be precluded from having his ſaid Execution, of and upon the Recovery aforeſaid, to be levied of the Goods and Chattels of the ſaid *Robert*, at the Time of his Death, unadminiſtered by the ſaid *Anne*; and that ſhe the ſaid *Anne*, ſhall be reſtored to all Things, which ſhe hath loſt by Occaſion of the Award of the Execution aforeſaid, *and ſo forth*. **Judgment.**

The Caſe as in the Book.

And upon Demurrer the Queſtion was, whether a Writ of *Audita Querela* would lie in this Caſe, becauſe, where the Party may have any other Remedy, this Writ will not lie upon this Reaſon, that if the Adminiſtrator had not ſuffered Judgment againſt her, by Default in the *Scire Facias*, ſhe might have prevented this Matter. But by her Neglect therein, ſhe could not then have an *Audita Querela*.

But the Court were of a contrary Opinion, upon the Reaſon of *Barcock* and *Thompſon*'s Caſe, that the Adminiſtrator ſhall have an *Audita Querela*, becauſe ſhe now hath no other Remedy. Sti. 281, 288.

Readings and Obſervations on Caſes in Audita Querela.

An *Audita Querela* is in its Nature a Suit in Equity, praying Relief from a Charge that is coming upon a Perſon, either by a Statute or Judgment, or ſuch like, which he ought not to bear, or to eaſe him of a Charge already come upon him; as when a Judgment is executed upon him, and his Lands, Goods, or Chattels ſeiz'd; and ſometimes it is to pray the Aid and Aſſiſtance of a Court of Juſtice to compel ſome others, who of Right ought to join in bearing the Burthen with him. And as it is a Command by the Juſtices to do Right to the Party, therefore the Law in this Caſe does not require ſuch Strictneſs, as in other Actions.

In treating upon which Subject, I ſhall inſert the Caſes in the Books under the following Heads.

1. **By and againſt whom it muſt be brought.**
2. **In what Caſes this Action will or will not lie, to relieve the Plaintiff from an Impriſonment, or ſome other Grievance by means of erroneous Proceſs.**

3. Where it will lie, becauſe the Plaintiff in a Suit or the Conuzee in a Statute hath diſcharged the Plaintiff by Matter of Fact; as by Releaſe or otherwiſe, or by Act in Law, as by purchaſing or ſurrendering Part of the Lands.

4. Where it will lie, becauſe the Party ſuing is already ſatisfied.

5. Where it will lie to compel others to bear the Burthen with the Plaintiff.

6. At what Time it muſt be brought.

7. And Laſtly, Of the Proceſs in this Action.

1. By and againſt whom it may be brought.

Obligor againſt Obligee.

1. If an Obligee hath an Extent on Lands and ſells the ſame, and after releaſes to the Obligor, the Obligor may have this Writ againſt the Obligee; and ſo adjudged in *Flower's* Caſe. *B. R. p.* 7. *New Nat. Bre.* 239.

Againſt Ter-tenant.

2. This Writ will lie againſt the Ter-tenant, without naming of him Party or Privy. *F. N. B.* 104. 12 *Hen.* 4. 16.

For an Infant

3. It will not lie for an Infant to relieve himſelf againſt a Statute after he is of full Age, but it muſt be brought during his Minority. *Dyer* 231.

Where an Infant ſhall or ſhall not have this Writ.

4. And ſo adjudged in the following Caſe, where an Infant was bound in a Statute Staple for 600 *l.* and was taken upon the Statute in Execution; and when he came at full Age, he brought an *Audita Querela*, and held to be too late; and it was ſaid by *Weſton*, that if an Infant bring an *Audita Querela* to avoid a Statute, and before the Trial, by Inſpection of the Juſtices he comes at at full Age, now by that the Writ ſhall abate; and the Judges in the determining this Cauſe, took this Diſtinction between a Fine and a Recognizance, or a Statute and a Deed inrolled by an Infant: For the laſt he may avoid at his full Age, becauſe nothing paſſes by the Enrollment; but otherwiſe in a Fine or Statute; for at firſt all paſſes by Matter of Record; and therefore if the Infant will not come while he is an Infant, and apply to be relieved, he ſhall not afterwards; beſides the Judges are ſuppoſed to, and they actually ſtrictly do examine an Infant, before they permit him to paſs any thing by Matter of Record. *Moor* 77. *Worſley*'s Caſe.

By the Heir againſt Aſſignee.

5. If the Obligee obtains a Judgment, and the Land of the Heir is extended, and the Plaintiff aſſigns it over, and after the Aſſignment releaſes to the Heir. In this Caſe he may have this Action againſt the Aſſignee, and without naming him who ſued out the Execution. *P.* 7 *Car. B. R.* Adjudged *Flower*'s Caſe. *M.* 36 & 37 *Eliz. C. B. Bul.* 1. 140. *New Nat. Brev.* 236.

where it doth not lie for Infant.

6. It doth not lie for an Infant to be relieved againſt a Judgment. *Moor* 460.

Releaſe after Trial.

7. If at the *Niſi prius* a Verdict be found againſt the Defendant, and before the Day in Bank, the Plaintiff releaſes to the Defendant all Actions and Demands, and then prays Judgment, the Defendant may have this Writ upon ſuch Releaſe. *New Nat. Brev.* 235. for he cannot plead this, at the Day in Bank; and before Judgment he cannot have an *Audita Querela.* 9 *Hen.* 5. 1. *New Nat. Bre.* 235.

Heir or Executor charged againſt Reaſon.

8. If any Thing in the Obligation charges the Heir, Executor, or Adminiſtrator unreaſonably, and againſt the Law, and no other Remedy is to be had, then they may be relieved by this Writ. *Co.* 5. 87. *Hob.* 58.

For Bail.

9. It will lie for the Bail to diſcharge him, where the firſt Judgment is ſatisfied, and the Recognizance diſcharged. *Cro.* 2. 645. Judgment is had againſt three, and one of them is taken in Execution, they may all join in this Writ where they have a Foundation to have it. 3 *Cro.* 443.

10. *J. S.* and the Defendant ſued him, and got one *A.* an Attorney, without his Notice, as Attorney to appear for him, and had Judgment on a *Non Sum Informatus*, and the Defendant in Execution; here this Writ was not granted. But in this Caſe 'twas ſaid, he was to be relieved by a Writ of *Diſceit* againſt the Attorney. 2 *Cro.* 694. *F. N. B.* 105. *A.*

Where it will not lie for procuring an Attorney to appear for another.

11. This Writ lieth for the Heir, as well as the Conuſor himſelf, and that before Execution ſued, and a *Superſedeas*, but not for a Stranger. *Co.* 3. 11.

12. It is doubted whether a Purchaſer after an Extent ſued, and the Land delivered, may have this Writ; for none is to have it but the Party grieved, and the Extent being before this Time, that he is not therefore to have it. *Cro.* 2. 227.

Whether a Purchaſer can have this Writ after an Extent.

13. If a Man be ſeized of Black-acre, and White-acre, and enter into a Statute, and then makes a Leaſe of White-acre for Years, the Reverſion over in Fee, and after the Conuſee purchaſeth Black-acre, and extends the Land of the Leſſee for Years: He in Remainder ſhall have this Writ, or a *Sci. Fa.* for his Relief; ſo he that hath but an *Intereſſe termini*, as *Ceſtuique Uſe* had before the Statute. *Marſh* 63, 69.

For him in Remainder.

14. If a Statute or Recognizance be ill taken, and after this the Recognizor enfeoffs a Stranger of the Land, and the Conuſee ſue Execution, the Feoffee may ſue out this *Audita Querela*.

Where for Feoffee.

15. If one gets my Land by a covenous Suit, I may in ſome Caſes have Relief by this Action. *F. N. B. Audita Querela.* *Co.* 8. 144.

Againſt a covenous Suit.

16. Where a Man ſuffers by an Adminiſtrator's Diſcharge of a Statute before a Judgment, Relief may be had by this Writ. 1 *Cro.* 734, 822. 2 *Co.* 8. 144. *Dyer* 203.

Adminiſtrator's diſcharging a Statute.

17. If an Adminiſtration be granted to one, and he ſueth a Debtor, and hath Judgment, and after another covenouſly ſueth out an Adminiſtration, and he alone releaſeth the Debt to the Debtor: Who notwithſtanding is taken in Execution, he ſhall not have this Writ to be relieved, for the Releaſe was void. *Co.* 6. 19. *Dyer* 339.

Where it will not lie againſt an Adminiſtrator.

18. It may lie for a Tenant by *Elegit* againſt another that had a former Charge, for leaving out Part of the Land chargeable when he took Execution. *And.* 2 *Pt.* 170, 171.

Tenant by Elegit.

19. If the Defendant in a perſonal Action do after Judgment enter'd, Releaſe to the Plaintiff all Actions perſonal, the Defendant may not have this Writ. *Co. Lit.* 289.

Againſt a Releaſe.

2. In what Caſes this Action will or will not lie to relieve the Plaintiff from an Impriſonment, or ſome other Grievance, by Means of erroneous Proceſs.

1. Where a Party renders the full Money in Court, when he is in Execution, he may have this Writ for his Enlargement. 1 *Leon.* 196. So when an erroneous Judgment is given againſt a Bail or Principal. *Stiles* 288, 323, 324.

Where Defendant renders the Money on erroneous Judgment.

2. It will alſo lie for the Bail to avoid an Execution againſt them, where no Proceſs hath been ſued forth againſt the Principal in his Lifetime, or there is Error in the Proceſs againſt him. *Gold.* 174.

For Bail on erroneous Proceſs.

3. A Judgment was had in the Common Bench in Debt againſt the Principal; the Plaintiff ſued the Bail upon the Recognizance and had Judgment; The Bail brought a Writ of Error in the King's Bench, where Judgment is affirm'd; the Defendant brings a Writ of Error, and the firſt Judgment was there reverſed: The Bail bring an *Audita Querela* there, and were diſcharged; for the Reverſal of the firſt Judgment of Courſe reverſed the Judgment upon the *Scire Facias*. 2 *Roll's* 254. *Green* and *Legris*.

Where Bail was relieved from one Judgment by another's being reverſed againſt the Principal.

Where againſt the Sheriff for an Eſcape.

4. So where a Sheriff doth arreſt one in Execution, and doth not return the Writ, but ſuffers him to eſcape, and upon an *Alias Capias* he doth arreſt him again. *More*, Caſe 167. An eſcape ſuffered by the Sheriff, is a Diſcharge of the Execution, and the Plaintiff may have an *Audita Querela*, otherwiſe if it be with Conſent of the Party. *Stiles* 117. *Moor* 57.

Where, for that the Defendant was not ſummon'd, and had a Releaſe to plead.

5. So where a *Sci. Fa.* goes againſt Executors, and the Sheriff returns *nulla bona*, and upon a Suppoſal of a Waſte, a new *Sci. Fa.* is ſued out with a *Fi. Fa.* and upon two *Nichils*, Judgment *de Bonis propriis*: It was held, if one be condemned on two *Nichils* returned, and was never ſummoned, he may have this Writ for his Relief. *Stiles* 372. otherwiſe on a *Sci. Fa.* returned, the ſame is held to be Law in the following Caſe.

Not being ſummon'd by the Sheriff on a Sci. Facias.

6. Upon a Recovery in Debt, if the Plaintiff ſues out a *Sci. Fa.* and the Sheriff returns *Nichil*, by which an Execution is awarded, the Defendant ſhall have an *Audita Querela*, if he has a Releaſe or Accquittance, becauſe he was not warned. But if the Sheriff returns him warned, he ſhall not have an *Audita Querela* upon ſuch Releaſe, becauſe he is ſuppoſed to have had an Opportunity to plead the ſame, upon the Return of the *Sci. Fa.* but his Remedy muſt be againſt the Sheriff for a falſe Return. *New Nat. Bre.*

Whether for Lands extended after the Body taken, and an Eſcape.

7. It lies not againſt the Conuſee, where the Sheriff hath taken the Body on a Statute Merchant, and afterwards ſuffered him to eſcape, and the Conuſee ſues out Execution againſt the Lands: For the Eſcape of the Conuſor is no Diſcharge of the Lands from the Execution upon a Statute Merchant. 1 *And.* 266. But if the Sheriff permits the Conuſor to go at large by the Conſent of the Conuſee, then the whole Execution is diſcharged, and the Conuſor ſhall have his Lands again. 1 *Leon.* 313.

Where it will not lie becauſe the Sheriff retook the Defendant.

8. Where a Priſoner eſcapes againſt both the Will of the Sheriff and the Party, and the Sheriff takes him again, this Writ will not lie, for the taking was lawful. *Co.* 3. 44. 8. 141. *Moor* 257.

Where a Perſon outlawed, and the Outlawry reverſed.

9. *A.* recovered againſt *B.* who was outlawed and taken in Execution by a *Capias utlagatum*, and eſcaped, the Outlawry was reverſed; *A.* ſued out Execution, and it was held *B.* might not have this Writ. *Co.* 8. 141.

Upon an erroneous Judgment in an inferiour Court.

10. If a Widow of a Copyholder in Fee, that claims Dower, by the Cuſtom of the Manor, recovers the ſame in the Lord's Court, and 50 *l.* for Damages, where in Truth there is no ſuch Cuſtom, and the Recovery is erroneous, the Party grieved may have this Remedy. *Co.* 4. 30.

Where a Sheriff may be relieved from a Charge for an Eſcape.

11. If one have a Judgment againſt a Sheriff upon an Eſcape, and after the firſt Judgment from the Execution whereof the Eſcape was, is revers'd for Error; the Sheriff for his Relief may have this Writ, but not till it be reverſed, tho' there be Error in it. *Co.* 8. 142.

3. Where a Perſon may have it, becauſe the Plaintiff in a Suit, or the Conuſee in a Statute hath diſcharged the Plaintiff by Matter of Fact; as by Releaſe or otherwiſe; or by Act in Law, as by purchaſing or ſurrendering Part of the Lands.

Where on a Releaſe.

1. When a Debt is releaſed after Verdict, or after Judgment, or Execution by the Plaintiff in the Suit, and the Caſe is ſo, that the Defendant hath not Time, nor Place to plead it; there regularly he muſt relieve himſelf by this Writ. 3 *Cro.* 153. But it muſt be a good and ſufficient Releaſe in Law, or elſe he cannot have this Writ. *Bro.* 37 *Hob.* 162.

On a Releaſe, in Deed, or in Law.

2. So in all Caſes where a Judgment, or Judgment and Execution is had againſt one, and the Plaintiff either makes a Releaſe, or the Defendant be releaſed by Act of Law, of a Duty, or of any Part of it, and yet the Plaintiff ſues out an Execution, the Defendant may have this Writ. 36 *H.* 6. 24. *Plow.* 72. *Dyer* 286. 2 *Cro.* 337.

3. If after an Extent, and an Aſſignment of the Extent, the Conuſee releaſe to the Conuſor, the Conuſor may have this Writ. *Cro.* 3. 153.

Where a Conuſee releaſes to the Conuſor.

4. If one be in Execution on a Statute, and the Conuſee ſurrender any Part of the Lands extended, he may have this Writ to diſcharge his Body out of Execution. *And.* 1, 175.

Where Conuſee ſurrenders Part of the Lands.

5. *A.* acknowledged a Statute to *B.* and after enfeoffed *B.* the Conuſee of Part of his Land, and after conveyed other Part of his Land to his Son, and the Wife of the Son for a Jointure for the Wife, the Conuſee ſued out Execution: And in this Caſe it was held, that the Son alone may have this Writ in his own Name, and that the Statute is defeated by purchaſing Part of the Land. *Dyer* 193.

By purchaſing Part of the Land.

4. Where it will lie becauſe the Party ſuing is already ſatiſfied

1. If one hath ſued me for a Debt, or other Cauſe, and hath Judgment againſt me to recover, and hath Execution, and then ſues me again for the ſame Cauſe, and hath Judgment and Execution, I may have my Remedy by this Writ. 9 *E.* 4. 50. *Bro. Abr.* 77. *b.*

For ſuing a ſecond Judgment after Judgment and Execution.

2. If the Plaintiff has had Satiſfaction againſt one Treſpaſſor, and he proceeds to require it againſt another, that other Perſon may have Relief by this Writ. *Hob.* 66. *Trin.* 3. *Jac. B. R.*

For ſuing one Treſpaſſor after Satiſfaction from another.

3. So if one bind himſelf and his Heirs by Specialty, and the Obligee ſues the Heir, and recovers of him, and then afterwards the Plaintiff ſues the Executors for the ſame Cauſe, or after he hath ſued the Executors, will ſue the Heir for the ſame Cauſe; the Heir or Executor may have Relief reciprocal, as the Caſe is by this Writ. *Plowd.* 439. *Bro.* 74.

The Heir and Executor ſued upon one Bond.

4. So if one take Goods from another to whom I delivered 'em, ſo that he is liable to both our Suits, and one of us ſue and recover againſt him, and then the other ſue him, his Remedy is by this Writ. *Dyer* 233. 5. *H.* 7. 15.

Where one is ſued twice for the ſame Thing.

5. If a Leſſee Covenants for him and his Aſſigns to repair, and the Leſſee aſſigns over, and the Covenant is broken, and the Leſſor ſues one of them, and recovers Damages, and then ſues the other, he may have this Writ for his Relief; ſo in like Caſes. *Bro. cap.* 74.

Where two Leſſees are ſued ſeparately for one Breach of Covenant.

6. If two joint and ſeveral Obligors be ſued jointly, and both taken in Execution, the Death or Eſcape of one will not diſcharge the other, or give him this Action. *Hob.* 58. But if ſuch Obligors be ſued ſeverally, and once a Satiſfaction is had againſt one of them, or againſt the Sheriff upon the Eſcape of one of them, the other may have this Writ. *Co.* 5. 87. *Godb.* 257. *Bulſt.* 2, 97.

Where two Obligors ſued jointly, Eſcape, &c. of one will not diſcharge the other; but if ſeparately, otherwiſe.

7. If a Judgment be againſt Three, and one of them is taken in Execution, and afterwards ſet at large by the Plaintiff's Conſent, if either of the other Two be taken in Execution upon this Judgment, he ſhall be diſcharged by this Writ. *Stiles* 387.

If one.

5. Where it will lie to compel others to bear the Burthen with the Plaintiff.

1. A Man having Land in two Counties enter'd into a Statute, and then made two Feoffments to *A.* and *B.* and an Extent went againſt the Lands of *B.* who afterwards levied a Fine of it to *J. S.* who brought this Writ againſt *A.* the other Feoffee. And it was held it did not lie for him, for he is not the Perſon grieved by the Execution; for the Land was charged when he bought it, & *tranſit cum onere*; yet a Purchaſer that comes in for

Where Feoffee may have this againſt another Feoffee.

for a valuable Conſideration, ſhall not be charged to pay more than another, but every one of them *pro rata*; and a Feoffee himſelf, the Feoffee of the Feoffee, and the twentieth Feoffee may have this Writ to be relieved againſt others. *Bul.* 2, 15, 16. *F. N. B.* 104.

Recognizance acknowledged by two, how one ſhall be relieved againſt the other.

2. If a Recognizance be acknowledged by two, both their Lands become chargeable, and Execution ſhall be equally made; and if one ſhould die, the Creditor muſt bring a *Scire Facias* againſt his Heir, and Ter-tenants; for they being all in *æquali Jure*, the Charge doth not ſurvive, but 'tis otherwiſe where the Lands are not bound by Specialty; as if two enter into a Bond, and one dies before Judgment, the Survivor ſhall be charg'd alone. 4 *Mod.* 316.

When againſt the Proſecutor himſelf.

3. It is to be brought ſometimes againſt the Proſecutor himſelf, and ſometimes againſt him and others that ought to bear Part of the Burthen with him. *Kelw.* 25. 1 *Brow.* 38.

Where the Conuſor in a Fine ſhall not have this Writ.

4. *R.* was bound in a Recognizance of 1000 Marks to *P.* and *C.* according to 23 *H.* 8. *c.* 6. and after *R.* and his Wife by Fine give to the Conuſee the fifth Part of the Manor of *B.* and other Lands in the County of *York* in Fee, after *P.* as Survivor, ſued out an Execution of the Recognizance in *London*, againſt *R.* and his Body was taken; in this Caſe it was held, the *Audita Querela* did not lie for him. *Plow.* 72.

6. At what Time it muſt be brought.

Of Matter to be pleaded after Judgment.

1. After a Suit is begun, and ſo far gon, as there is no Time to plead a Matter, then this Writ may iſſue, but not till the Judgment be had. *Fitz.* 13. But if one that is ſued by the King, get a charter of Pardon, or any Releaſe in the mean Time, between the Verdict and Judgment; and after the Judgment is had, there he may plead it after Judgment, for he may not have this Writ againſt the King. 11 *H.* 7. 10.

Where quia timet.

2. This Writ may lie for one before he is ouſted of his Land by the Execution, where he is in Danger of it only. *Winch* 20, 23.

For Adminiſtrator.

3. Where the Plaintiff that ſues as Adminiſtrator, hath his Letters of Adminiſtration revoked, he muſt be relieved by this Writ, for he cannot plead it. *Yelv.* 125. *Stiles* 417.

Where he might have pleaded.

4. Where the Party might have pleaded Matter in Diſcharge, and hath elapſed his Time, he ſhall not be relieved by an *Audita Querela.* 1 *Roll's Abr.* 306.

5. Therefore where a Releaſe is made before Verdict, the Party ſhall not have an *Audita Querela.* 2 *Rolle's Rep.* 128. *Salkill* and *Howard.*

6. If Execution be ſued upon a Statute Merchant or Staple, an *Audita Querela*, lies upon the Releaſe by the Plaintiff, becauſe that he had not any Day in Court before to plead it. 1 *Roll's Abr.* 307.

7. So in Treſpaſs or other Action; if a Verdict be given for the Plaintiff, and afterwards the Plaintiff releaſed to the Defendant before the Day in Bank, and afterwards Judgment is given for the Plaintiff, the Defendant ſhall have an *Audita Querela*, becauſe he could not plead the Releaſe at the Day in Bank. 6 *R.* 2. 1 *Roll's Abr.* 307.

7. And Laſtly, Of the Proceſs in this Action.

1. The proper Proceſs on an *Audita Querela quia timet*, is a *Venire*, and Diſtreſs Infinite, and not a *Scire Facias*. But where the Party is in Execution, there he may have either a *Scire Facias*, or a *Venire*, 1 *Salk.* 92. So was it adjudged in an *Anonymous* Caſe, 1 *Salk.* 90. If an *Audita Querela* be founded on a Record, or the Party be in Execution, the Proceſs upon it is a *Scire Facias*; but if it be grounded on a Matter of Fact, or the Party be not in Execution, the Proceſs is by *Venire*. *Clerk* againſt *Moor*.

2. Where before Execution this Writ is brought by the Party grieved himſelf, or by his Heirs or Executors, he ſurmiſing good Cauſe of this Writ, muſt give good Bail to proſecute, and ſtand to the Judgment of the Court, upon which he may have a *Superſedeas* to ſtay Execution; but when the Plaintiff is in Priſon, then it ſeems there is no Bail put in, till the Conuſee or Obligee anſwers in the *Audita Querela*. *Palm.* 422.

3. *Note*; the Proceſs before Execution are *Venire Facias*, and *Diſtringas*; and if he comes not to appear upon the *Diſtringas*, (unleſs the Sheriff returns *Nihil habet* upon the *Venire*,) then ſhall Iſſue a *Diſtringas*, *Alias* and *Plures*, and upon a *Nihil* return'd on theſe Proceſs's, a *Capias* ſhall iſſue.

4. After Execution executed, no *Superſedeas* doth lie; after Execution a *Scire Facias* doth iſſue, and this Peremptory.

5. The *Proceſs* before Execution are a *Venire Facias*, and an *Alias*, *&c.* and then if he comes not in, the Uſe hath been that upon Motion, the Party in Priſon may be diſcharged. *Moor* 811.

6. After theſe Proceſs's a *Diſtringas*, and upon Default after Appearance, and a Plea pleaded a *Diſtringas ad Audiendum Judicium*; for by ſuch Default Judgment ſhall be given againſt him, and after Execution the Proceſs is a *Sci. Fa.* when the Party is in Priſon upon a *Ca. Sa.* 3 *Cro.* 364.

7. Where a Man puts in Bail in this Action, he ſhall not be diſcharged of this Bail, but muſt continue till the Suit by *Audita Querela* be determin'd; for albeit the Party do not proſecute after the Appearance of the Defendant, yet he muſt continue in Priſon, or ſtand upon his Bail.

8. If a Man be nonſuited in one *Audita Querela*, yet he may have another, but he ſhall have no *Superſedeas* in the Second, as he had in the Firſt.

Where to proceed on the Record of Audita Querela.

9. If an *Audita Querela* be brought before the Execution of a Judgment *quod timet*, and it goes for the Defendant, he ſhall execute his principal Judgment; but if it be brought after the Party is in Execution, and he be bailed out, then the Judgment being once executed, there can be no other Reſort to that, but the Defendant ſhall proceed upon the Record of the *Audita Querela*. 1 *Vent.* 264.

Where Audita Querela no Superſedeas.

10. An *Audita Querela* is no *Superſedeas*, and therefore Execution may be taken out unleſs a *Superſedeas* be ſued forth; and if the *Audita Querela* be founded on a Deed, it muſt be proved in Court before a *Superſedeas* ſhall be granted. 1 *Salk.* 92.

Bail.

11. If the Party that brings an *Audita Querela* be out of Priſon, the Court will Bail him, tho' grounded upon a Surmiſe of Fact as Payment; but if he be in Priſon not, unleſs there be a Specialty that he can ſhew. 1 *Vent.* 46.

The Writ not praying Reſtitution.

12. Lands were extended upon a Recognizance enter'd into by one that had Lands in *London* and *Middleſex*; the Feoffee of the Lands in *Middleſex* which had been extended, brought a *Scire Facias* by way of *Audita Querela* againſt the other Feoffee of the Lands in *London*, to pray an equal Extent, but did not pray Reſtitution and an equal Extent; but held the Writ might be brought in that Manner, and that it was no Ground for the Quaſhing it, becauſe it did not pray all that it might have had. *Moor* 536. *Very* and *Carew*.

REFERENCES to Precedents In Audita Querela.

Upon a Defeaſance.

UPON a Statute Merchant unduly acknowledged and executed. Wi. Entr. 12. Ra. 98.

Againſt an Executor upon a Statute Merchant where there was a Defeaſance upon Performance of Covenants in an Indenture, which the Plaintiff performed on his Part, and on Payment of the Money at a certain Day between the Hours, and at a Place in the ſame ſpecified, which Sum the Plaintiff was ready and offered to pay. Wi. Entr. 14. Ra. 98.

Upon a Judgment in the Common Bench, and a Defeaſance for performing Covenants in an Indenture, which the Plaintiff performed on his Part. Br. R. 122.

Brought upon a Defeaſance, or temporal Releaſe after Judgment. Bro. Met. 60. Demurrer thereupon. Bro. Red. 122. Vet. Intr. 109. 1 Br. 41.

Upon a Releaſe, &c.

Upon a Special Releaſe by way of Covenant, made to the Plaintiff upon a Bond, enter'd into by him and two others; Defendant obtain'd Judgment thereupon againſt the Plaintiff, for that he had not then the Releaſe in his Hands, but was ignorant thereof. Demurrer. Ro. Entr. 154. 1 Br. 32.

For the Heir of the Conuſor by his next Friend upon a Statute Staple, acknowledged by the Father, to which the Plaintiff pleaded a Releaſe. Ro. Entr. 157. Theſ. Br. 29.

Upon a Releaſe after Judgment recovered in the King's Bench. Vid. 109. Theſ. Br. 11, 12, 13.

By Joint Treſpaſſors upon a Releaſe to his Companions. Mo. Ent. 94.

Upon a Releaſe to a Statute Stap. given to the Plaintiff by the Adminiſtrator of the Conuſee, who notwithſtanding was ſued to Execution. 2 Bro. 50.

Upon a Releaſe to a Judgment in Debt recovered by one Adminiſtrator, and given by another. Plea thereon. Ro. Entr. 159.

Againſt an Executor, who proſecuted an Elegit after the Teſtator releaſed the Debt and Damages. Bro. Met. 80.

Entry of an Audita Querela upon a Releaſe brought by one in Priſon. Mo. Entr. 92.

The like upon a Suggeſtion of a Releaſe where the Defendant was Surety for the Plaintiff, upon a Bond for Performance of Covenants. Bro. Met. 66.

Upon an Award between the Verdict and Judgment, the Defendant proſecuted the Execution of the Judgment, notwithſtanding the Performance of the Award. Bro. Met. 57.

The Plaintiff was taken in Execution by the Deceaſed, and by his Conſent was permitted to eſcape, and was again taken by the Adminiſtrator. Ro. Entr. 161. Theſ. Br. 10.

The like upon an Eſcape by Conſent of the Sheriff, when the Party was in Execution. Mo. Intr. 91. Bro. Met. 52, 72. Theſ. Br. 10.

The Plaintiff and N. were ſued upon a Writing, whereupon Judgment was obtained againſt 'em ſeparately. N. was taken and permitted to go at large, notwithſtanding the Plaintiff by a Habea Corpus cum Cauſa, ſued out by the Defendant, was committed to the Fleet. Br. R. 127. Co. Ent. 615. 3 B. 21.

Upon Nonage.

By Infancy of the Plaintiff, who acknowledged a Recognizance in Chancery, where the Plaintiff at firſt produced three Witneſſes. The Court adviſed thereon, a Sci. Fa. was awarded, and it was directed to him to produce other Proof of his Age, who produced three other Witneſſes, with the Regiſter of the Pariſh. Bro. Entr. 155.

The like where an Infant Plaintiff was Bail, and in Woodſtreet Compter, and diſcharged. 2 Bro. 52.

By

By the Heir and Tertenant.

For a Brother and Heir upon a Judgment recovered againſt the Deceaſed, and ſatisfied by him in his Life-time, the Defendant notwithſtanding is proſecuting an Execution againſt the Plaintiff as Heir, and Tertenant. Vid. 102. Theſ. Br. 29. Demurrer.

For a Tertenant upon a Judgment in Debt extended upon the Lands which were demiſed for Life before the Judgment given, and where other Lands were omitted. Vid. 104. Bro. Red. 124.

The Heir in Aud. Qu. ſays, that the Lands purchaſed by his Father of the Conuſor, are not liable to the Execution of the Conuſee upon a Statute Staple. Bro. Met. 71.

By an Heir, for that the Executrix of the Conuſee had taken Parcel of the Conuſor's Lands in Execution, but omitted to take other Lands. Bro. Met. 73.

General Audita Querela's.

Upon a Statute Merchant unduly executed. Wi. Ent. 12.

For Three, where the Defendant recovered Judgment in the Common Bench againſt one, and another Judgment againſt him and two others who were his Bail; upon the Recognizance a Writ of Error was brought upon the Judgment on the Recognizance, and the Judgment affirmed. A Writ of Error brought upon the firſt Judgment which was reverſed, and therefore the Judgment upon the Recognizance ought to be diſcharg'd. Nevertheleſs the Defendant ſued out an Execution againſt them, and the Plaintiffs render'd themſelves Priſoners to the Marſhal in Execution. A Demurrer thereto. 2. Bro. 45.

Brought by one of the Bail, for that the Principal had paid the Money before the Judgment had againſt the Bail. Theſ. Br. 22.

Brought by Bail, for that the Defendant was taken in Execution, upon a Judgment obtained in London, after the Cauſe removed by Habeas Corpus. Theſ. Br. 9.

The Plaintiff was impriſoned by the Defendant and another, and by Dureſs gave a Bond, and was afterwards again impriſoned until he acknowledged Judgment thereon; and being preſent in Court was committed to the Marſhal in Execution, at the Inſtance of the Defendant. Vid. 108.

For Two, where one by Dureſs, and another as his Surety, made a Warrant of Attorney for his Appearance, &c. no Writ or Proceſs having been iſſued; Defendant thereupon obtain'd Judgment, and intended to ſue them to Execution. Vid. 111.

That the Plaintiff by Dureſs acknowledged a Stat. Stap. whereupon the Defendant was taken in Execution. Bro. R. 126. Theſ. Br. 31.

Where the Defendant as Adminiſtrator recovered Judgment in the King's Bench againſt the Plaintiff in Trover, and afterwards the Adminiſtration was revoked by a Sentence in the Court of Delegates, and Adminiſtration was committed to another. 2 San. 137. Theſ. Br. 14.

For that, after the Plaintiff had recovered upon a Bond, he accepted another Bond, with a new Security. Theſ. Br. 11.

Demurrer thereto.

A Demurrer, For that the Defendant did not bring into Court the Releaſe in Writing in the Declaration above ſpecified, which he ought to have done by the Law of the Land. Bro. Met. 70.

Bars thereto.

That the Lands extended at the Time of the Judgment were the Lands of the Cognizor in Poſſeſſion, and a Traverſe that the Cognizor demiſed for Life; and as to the Reſidue, that the Cognizor was not ſeiſed of the Lands omitted, and two Iſſues thereon. 1 Vid. 105.

That the Lands omitted deſcended to the Heir of the Conuzor, who at the Time of the Execution was under Age; Tenants ſay he is now of full Age, and pray that the Executor of the Conuzee may have Execution againſt him of the Tenements omitted. The Plaintiff doth not deny it, and Execution is awarded. Bro. Met. 76.

That the Defendant was ready to receive the Money and traverſed, that the Plaintiff was ready, and tender'd it. Wi. Entr. 21.

An Audita Querela upon a Releaſe of Damages recovered in Treſpaſs in B.R. Defendant pleads Non eſt factum. Mo. Intr. 105.

One of the Bail declares, that the Principal had paid the Money, before Judgment was obtained againſt the

Bail. The Defendant pleads, that the Principal did not pay the Money. Theſ. Br. 27.

Defendant pleads that he recovered Judgment, before he was cited to the Delegates, touching the Revocation of the Adminiſtration. Theſ. Br. 19. Demurrer and Joinder.

That a Releaſe in Writing was firſt delivered ſuch a Day, and Traverſe, that the Recognizance was firſt delivered at ſuch a Day. Ro. Entr. 158.

That Adminiſtration was committed to the Wife of the Inteſtate, who recovered Judgment againſt the Plaintiff, and after that Adminiſtration was fraudulently obtained by the Defendant, with Intent to releaſe the Plaintiff; which was revoked, and the firſt was in Force. Demurrer thereto, and Judgment for the Defendant. Ro. Entr. 160.

Bar, that the Defendant made the Releaſe by Dureſs; Replication, that he made the Writing Voluntarily, and without Compulſion, and not by Dureſs. Iſſue thereon. Vid. 110.

By Proteſtation, &c. for Plea, that the Plaintiff acknowledged the Action voluntarily, and without Compulſion, and traverſes, that it was by Dureſs. Replication and Iſſue. Vid. 108.

That the Plaintiff was not taken in Execution at the Suit of the deceaſed. Ro. Entr. 162.

Bar to an Audita Querela upon a voluntary Eſcape, that the Writ and Declaration are inſufficient; for Plea ſays, that the Plaintiff was impriſoned as above, &c. and ſo remains, with a Traverſe to the voluntary Eſcape of the Sheriff; Replication, the Sheriff voluntarily permitted the Plaintiff to Eſcape, and Iſſue. Bro. Met. 56.

The like of a Judgment confeſs'd. Vid. 107.

That the Defendant recovered Judgment before any Appeal was proſecuted in the Court Chriſtian, for revoking the Letters of Adminiſtration granted to him; Demurrer and Judgment for the Plaintiff. 2 San. 145.

Upon a Releaſe (made to one of the Three that committed a Joint Battery, and named in one Writ, after Verdict againſt one, and before the Day in Bank) Defendant in Audita Querela pleads no ſuch Record of the Original Writ, and the Recovery of Coſts thereupon. Plaintiff demurs, and Defendant's Plea adjudged double, and ill. Mo. Int. 94.

Proceſs therein.

An Audita Querela in the Common Pleas upon a Statute Staple. 2 Bro. 50. Mo. Intr. 102, 139. Ro. Entr. 157. Wi. Entr. 14. the like. Bro. Met. 80.

The like upon a Judgment in the King's Bench. Br. R. 122, 124.

The like in the King's Bench upon a Judgment in the Common Pleas. 2 Bro. 45. Vid. 104.

The like in the King's Bench upon a Judgment in the ſame Court. Vid. 108, 110.

The like in the Common Pleas upon a Recognizance in Chancery. Ro. Ent. 155.

The Plaintiff ſhew'd the Writing in Chancery. Wi. Entr. 15. 2 Bro. 51. Vid. 110. Ro. Entr. 159. Br. R. 122.

Where the Plaintiff had the Bond in his own Cuſtody. Ro. Entr. 158. Br. Red. 125.

The Plaintiff came in his proper Perſon. 2 Bro. 52. Ro. Entr. 155. bis.

The Plaintiff taken in Execution by the Sheriff and brought to the Bar. Ro. Entr. 161.

The Plaintiff ſurrendered himſelf to Priſon, and came into Court in Cuſtody of the Marſhal, in Execution. Vid. 110. 2 Bro. 47.

The Plaintiff preſent in Court, at the Petition of the Defendant was committed to the Marſhal in Execution, and came into Court in his Cuſtody. Vid. 108.

The Defendant appear'd after two Nichils return'd upon a Scire Facias, and had an Imparlance. A Demurrer to the Writ and Count. 2 Bro. 49.

The Plaintiff came into Court by Attorney. 2 Bro. 51.

The like by a next Friend. Ro. Entr. 158.

The like by Attorney ſpecially admitted by the Court. Ro. Entr. 156.

A Diſtringas in an Audita Querela. Mo. Intr. 243.

The Entry of a Diſtringas in Audita Querela. Bro. Met. 79.

A Venire Facias awarded, the Sheriff return'd a Tarde, and to another Venire Facias, that the Defendant is attached by his Pledges, and a Declaration thereupon. Ro. Entr. 162.

Superſedeas of an Execution of Lands for the Tertenant. Vid. 103.

The Defendant made Default after two Nichils return'd upon a Scire Facias; the Declaration, and Judgment for the Plaintiff. 2 Bro. 53.

The King hath ſent to his Juſtices his Writ Cloſe in theſe Words. Wi. Entr. 12. Vid. 102, 108, 109. 2 Bro. 45, 52. Ro. Entr. 154. Bro. R. 124, 126, 127. 2 San. 137. Mo. Intr. 105.

It is commanded to the Sheriff, &c. Wi. Entr. 14. 2 Bro. 50. Vid. 104.

Declaration with the Entry of heretofore as it appeareth. Wi. Entr. 12. Ro. Entr. 155, 159, 161. Bro. R. 122.

Imparlance after Oyer of a Releaſe. Ro. Entr. 158.

Imparlances. Ibid.

A Plea after Imparlance. Ro. Entr. 158, 160.

The like after Oyer of a Defeazance. Wi. Entr. 21.

Venire Facias awarded. Vid. 107. 2 Bro. 51. Ro. Entr. 155, 158, 161. Br. R. 122, 126. 2 San. 144. Mod. Intr. 104. Bro. Met. 75.

Scire Facias awarded. Vid. 109, 110, 112. 2 Bro. 49, 52. Ro. Entr. 156. Br. R. 126, 128. Cl. Man. 48, 49.

Superſedeas in Audita Querela. Mod. Intr. 105.

Scire Facias after a Judgment. Theſ. Bro. 243.

The like to acknowledge or deny a Releaſe after Judgment, upon the Statute of Forcible Entry. Ibid. 346.

The like againſt an Executor upon an Audita Querela brought upon a Recognizance acknowledged by the Teſtator before the Chief Juſtice. Id. 206.

The like upon an Audita Querela upon a Recognizance acknowledg'd by an Infant. Id. 265.

The like againſt the Bail of the Plaintiff, upon an Audita Querela on a Nonproſs. Id. 244.

The Award of a Venire Facias to a Defendant in an Audita Querela. Ibid. 13, 26, 28, 30.

Elegit upon a Reſtitution awarded upon an Audita Querela brought in Chancery, and tranſmitted into the Court of King's Bench. Idem 98.

Actions on the Caſe.

For Money had and received.

Norfolk (*ſſ.*) *A. B.* complains of *C. D.* being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, before the King himſelf, For that, whereas the ſaid *C. D.* on the Tenth Day of *March*, in the Fifth Year of the Reign of our Sovereign Lord *George* the Second, King of *Great Britain, and ſo forth*, was indebted to the ſaid *A. B.* in Fifty Pounds of lawful Money of *Great Britain*, for the like Sum of Money, by him the ſaid *C.* before that Time had and received to the Uſe of the ſaid *A.* and being ſo indebted, he the ſaid *C.* afterwards (that is to ſay) on the ſame Day and Year, at *Thetford* aforeſaid, in the County aforeſaid, in Conſideration thereof, then and there undertook, and faithfully promiſed, that he the ſaid *C. D.* would well and truly content and pay to the ſaid *A.* the ſaid Sum of Fifty Pounds, whenever after he ſhould be thereto required.

For Money laid out and expended.

And whereas the ſaid *C.* afterwards (that is to ſay) on the ſame Day and Year, at *Thetford* aforeſaid, was indebted to the ſaid *A.* in another Sum of Fifty Pounds, of like lawful Money of *Great Britain*, for the like Sum of Money by the ſaid *A.* before that Time, at the ſpecial Inſtance and Requeſt of the ſaid *C.* and to the Uſe of the ſaid *C.* paid, laid out, and expended; and being ſo indebted, he the ſaid *C.* afterwards (that is to ſay) the ſame Day and Year, at *Thetford* aforeſaid, in Conſideration thereof, undertook, and

For Money lent.

faithfully promiſed the ſaid *A.* that he would well and truly content and pay him the ſaid Fifty Pounds laſt mention'd, whenever after he the ſaid *C.* ſhould be thereto required. And whereas the ſaid *C.* afterwards (that is to ſay) the ſame Day and Year, at *Thetford* aforeſaid, was indebted to the ſaid *A.* in the further Sum of Fifty Pounds, of like lawful Money, for the like Sum before that Time, by the ſaid *A.* lent to the ſaid *C.* at his ſpecial Inſtance and Requeſt; and being ſo indebted, the ſaid *C.* afterwards (that is to ſay) the ſame Day and Year, at *Thetford* aforeſaid, in Conſideration thereof, undertook, and faithfully promiſed the ſaid *A.* truly and faithfully to content and pay him the ſaid Fifty Pounds laſt mention'd, whenever after he the ſaid *C.* ſhould be thereto required.

For Goods ſold and deliver'd for as much as they were really worth. With an Averment, that they were worth 50 l.

And whereas the ſaid *A.* afterwards, (that is to ſay) the ſame Day and Year, at *Thetford* aforeſaid, at the ſpecial Inſtance and Requeſt of the ſaid *C.* ſold and deliver'd to him divers Goods and Merchandizes of him the ſaid *A.* he the ſaid *C.* in Conſideration thereof, then and there undertook, and faithfully promiſed, that he the ſaid *C.* would well and truly pay to the ſaid *A.* ſo much Money as ſuch Goods, Wares and Merchandizes ſo ſold to the ſaid *C.* by the ſaid *A.* were reaſonably worth, at the Time of the Sale and Delivery thereof, whenever after he the ſaid *C.* ſhould be thereto required. And the ſaid *A.* doth aver in Fact, that the ſaid Goods, Wares and Merchandizes, ſo ſold to the ſaid *C.* by him the ſaid *A.* as above, were, at the Time of the Sale and Delivery thereof, reaſonably worth the further Sum of Fifty Pounds of like lawful Money (that is to ſay) at *Thetford* aforeſaid, of which the ſaid *C.* afterwards (to wit) the ſame Day and Year, at *Thetford* aforeſaid, had Notice.

An Indebitatus Aſſumpſit for another 50 l. for Goods, Wares and Merchandizes ſold and deliver'd.

And whereas the ſaid *C.* afterwards (to wit) the ſame Day and Year, at *Thetford* aforeſaid, was indebted to the ſaid *A.* in the further Sum of Sixty Pounds, of like lawful Money of *Great Britain*, for divers other Goods, Wares and Merchandizes of the ſaid *A.* by him before that Time ſold and deliver'd to the ſaid *C.* at his ſpecial Inſtance and Requeſt; and being ſo indebted, he the ſaid *C.* afterwards (to wit) the ſame Day and Year, at *Thetford* aforeſaid, in Conſideration thereof, undertook, and faithfully promiſed the ſaid *A.* that he the ſaid *C.* would well and truly content and pay him the ſaid *A.* the ſaid Sum of Fifty Pounds laſt mention'd, whenever after he the ſaid *C.* ſhould be thereto required.

For another 50 l. for Meat, Drink, Waſhing, and Lodging.

And whereas the ſaid *C.* afterwards (to wit) the ſame Day and Year, at *Thetford* aforeſaid, was indebted to the ſaid *A.* in another Sum of Ninety Pounds of like lawful Money, for Meat, Drink, Waſhing and Lodging by the ſaid *A.* for the ſaid *C.* at his like ſpecial Inſtance and Requeſt, before that Time found and provided; and being ſo indebted, the ſaid *C.* afterwards (to wit) the ſame Day and Year, at *Thetford* aforeſaid, in Conſideration thereof, undertook, and then and there faithfully promiſed, that he the ſaid *C.* would well and truly content and pay to the ſaid *A.* the ſaid Sum of Ninety Pounds, whenever after he the ſaid *C.* ſhould be thereto required.

A Quantum Meruit for Meat, Drink, &c.

And whereas afterwards, (to wit) the Day and Year above, at *Thetford* aforeſaid, in Conſideration that the ſaid *A.* before that Time, at the ſpecial Inſtance and Requeſt of the ſaid *C.* had found and provided for the ſaid *C.* other ſufficient Meat, Drink, Waſhing and

Lodging, for a long Time (to wit) for the Space of Twelve Months then laſt paſt, at *Thetford* aforeſaid, he the ſaid *C.* then and there undertook and faithfully promiſed the ſaid *A.* that he the ſaid *C.* would well and truly pay to the ſaid *A.* ſo much lawful Money of *Great Britain* as the ſaid *A.* reaſonably deſerved to have of the ſaid *C.* for ſuch Meat, Drink, Waſhing and Lodging, ſo found and provided by the ſaid *A.* for the ſaid *C.* as above, (to wit) at *Thetford* aforeſaid. **And** the ſaid *A.* ſaith in Fact, That he reaſonably deſerved to have of the ſaid *C.* for the ſaid Meat, Drink, Waſhing and Lodging, ſo found and provided for the ſaid *C.* as above, the Sum of Fifty Pounds, of lawful Money of *Great Britain*, of which the ſaid *C.* afterwards (to wit) the ſame Day and Year aforeſaid, at *Thetford* aforeſaid, had Notice from the ſaid *A.*

And Indebitatus Aſſumpſit for Work and Labour.

And whereas the ſame Day and Year at *Thetford* aforeſaid, the ſaid *C.* was indebted to the ſaid *A.* in the Sum of One Hundred Pounds of like lawful Money, for certain Work and Labour done and perform'd by the ſaid *A.* in his Trade of a Carpenter, before that Time for the ſaid *C.* at his ſpecial Inſtance and Requeſt, and for divers Materials, and neceſſary Things found and provided by the ſaid *A.* in and about ſuch Work, at the like ſpecial Inſtance and Requeſt of the ſaid *C.* and being ſo indebted, the ſaid *C.* afterwards (to wit) the ſame Day and Year, at *Thetford* aforeſaid, in Conſideration thereof, undertook, and faithfully promiſed the ſaid *A.* that he the ſaid *C.* would well and truly content and pay him the ſaid *A.* the ſaid One Hundred Pounds, whenever he ſhould be thereto required.

A Quantum Meruit for the ſame.

And whereas the ſaid *A.* afterwards (to wit) the Day and Year abovemention'd, at *Thetford* aforeſaid, had done and perform'd for the ſaid *C.* at his like ſpecial Inſtance and Requeſt, certain other Work and Labour in his the ſaid *A.*'s Trade of a Carpenter; and had, at the like Inſtance and Requeſt of the ſaid *C.* found and provided divers other Materials and Things uſed and employ'd in and about the ſaid Work and Labour laſt mention'd, he the ſaid *C.* then and there, in Conſideration thereof, undertook, and faithfully promiſed the ſaid *A.* that he would content and pay to the ſaid *A.* all ſuch Sums of Money as the ſaid *A.* deſerved to have for ſuch Work and Labour laſt above mention'd to be done and perform'd by the ſaid *A.* for the ſaid *C.* and for ſuch Materials about the ſame, found and provided by the ſaid *A.* as aforeſaid, whenever he ſhould be thereto required. **And** the ſaid *A.* in Fact ſaith, That he reaſonably deſerved to have for the ſaid Work and Labour laſt above mention'd, to be done and perform'd for the ſaid *C.* by him the ſaid *A.* the Sum of Fifty Pounds of like lawful Money; and that for the neceſſary Materials, and Things found and provided by the ſaid *A.* in and about ſuch Work and Labour, he reaſonably deſerved to have another Sum of Fifty Pounds, of like lawful Money, of which the ſaid *C.* afterwards (to wit) the ſame Day and Year, at *Thetford* aforeſaid, had Notice from him the ſaid *A.*

And Indebitatus Aſſumpſit for an Apothecary's Bill for the Defendant's Daughter.

And whereas, the ſame Day and Year, at *Thetford* aforeſaid, the ſaid *C.* was indebted to the ſaid *A.* in the further Sum of Twenty

Pounds of like lawful Money, for curing and healing one *F. D.* Daughter of the ſaid *C. D.* (at the ſpecial Inſtance and Requeſt of the ſaid *C.*) of divers Diſeaſes and Infirmities, which the ſaid *F.* before that Time labour'd under; and being ſo indebted, the ſaid *C.* afterwards (to wit) the ſame Day and Year aforeſaid, in Conſideration thereof, undertook, and faithfully promiſed to pay to the ſaid *A.* the ſaid Twenty Pounds, whenever he ſhould be thereto requeſted.

A Quantum Meruit for the ſame.

And whereas the ſaid *A.* the ſame Day and Year, at *Thetford* aforeſaid, at the ſpecial Inſtance and Requeſt of the ſaid *C. D.* had heal'd and cur'd the ſaid *F. D.* Daughter of the ſaid *C. D.* of divers other Infirmities and Diſeaſes which the ſaid *F. D.* before that Time labour'd under, the ſaid *C. D.* then and there, in Conſideration thereof, undertook, and faithfully promiſed, that he the ſaid *C.* would well and truly pay to the ſaid *A.* all ſuch Sums of Money as he the ſaid *A.* reaſonably deſerved for the ſame; and the ſaid *A.* in Fact ſaith, That he reaſonably deſerved to have for the ſame from the ſaid *C.* another Sum of Twenty Pounds of which the ſaid *C. D.* had Notice from the ſaid *A.* on the Day, and at the Place aforeſaid. And whereas the ſame *A.* and *C.* afterwards (to wit) the ſame Day and Year, at *Thetford* aforeſaid, accounted together of and concerning divers Sums of Money before that Time due to the ſaid *A.* from the ſaid *C.* and then in Arrear and unpaid; and upon ſuch Account ſtated, the aforeſaid *C.* was then and there found to be in Arrear to the ſaid *A.* in the Sum of One Hundred Pounds of like lawful Money, and being ſo found in Arrear, the aforeſaid *C.* in Conſideration thereof, (to wit) the ſame Day and Year, at *Thetford* aforeſaid, undertook, and to the ſaid *A.* then and there faithfully promiſed, that he the ſaid *C.* would well and truly content and pay the ſaid *A.* the aforeſaid One Hundred Pounds, whenever afterwards he ſhould be thereto required. Nevertheleſs, the aforeſaid *C.* not regarding his ſeveral Promiſes and Undertakings aforeſaid, made in Form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *A.* in this Particular, hath not paid the ſaid ſeveral Sums, or any Part thereof, to the ſaid *A.* nor in any Manner howſoever made him Satisfaction for the ſame, altho' the aforeſaid *C.* hath been requeſted thereto by the ſaid *A.* afterwards, (to wit) the Tenth Day of *May*, in the Year firſt abovemention'd, and often afterwards, at *E.* aforeſaid in the County aforeſaid, but he the ſaid *C.* hitherto hath, and ſtill doth refuſe ſo to do: Wherefore he the ſaid *C.* ſaith, that he is thereby injured and endamaged to the Value of Three Hundred Pounds, and therefore hath brought this Suit, *and ſo forth.*

An Inſimul Computaſſet.

A Declaration upon a promiſſory Note againſt the Defendant as Drawer, payable one Month after Date; ſetting forth That A. made a promiſſory Note for 20 l.

London ſſ. *A. B.* late of the Pariſh of St. *Michael Queenhithe, London*, was attached to anſwer to *C. D.* of a Plea of Treſpaſs upon the Caſe, *and ſo forth*; and the ſaid *C.* by *John Cock*, his Attorney, complains, That whereas the ſaid *A.* the Tenth Day of *March*, in the Year of our Lord One thouſand ſeven hundred and thirty-one, at the Pariſh of St. *Mary le Bow*, in the Ward of *Cheap, London*, made a certain promiſſory Note in Writing, and ſubſcribed his Hand-writing thereto, and deliver'd the ſame to the ſaid *C.* by which he promiſed to pay to the ſaid *C.* or to his Order, Twenty Pounds of lawful Money of *Great Britain*, one Month after Date, for Value receiv'd; by Reaſon of which, and by Force of the Statute in that Caſe made and provided, the ſaid *A.* became liable to pay to the ſaid *C.* the ſaid Twenty Pounds, at the Time in the ſaid Note for that Purpoſe limited and appointed; and being ſo indebted, the ſaid *A.* in Conſideration thereof, the ſame Day and Year abovemention'd, at the Pariſh and Ward aforeſaid, undertook, and faithfully promiſed the ſaid *C.* that he would well and truly pay him the ſaid Sum of Twenty Pounds mention'd in the ſaid Note, at the Time for that Purpoſe therein limited and appointed. **And** whereas alſo the ſaid *A.* afterwards (that is to ſay) the Tenth Day of *April*, in the Year of our Lord One thouſand ſeven hundred and thirty-two, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, made another promiſſory Note in Writing, bearing Date the Day and Year laſt above mention'd, and ſubſcribed the ſame with his own Hand, and deliver'd it to the ſaid *C.* and thereby promiſed to pay to the ſaid *C.* One Hundred Pounds, of like lawful Money of *Great Britain*, on Demand, for Value receiv'd; by reaſon whereof, and by Force of the Statute in that Caſe made and provided, the ſaid *A.* became liable to pay to the ſaid *C.* the ſaid One Hundred Pounds upon Demand; and being ſo liable, the ſaid *A.* afterwards (that is to ſay) the ſame Day and Year, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, in Conſideration thereof, undertook, and faithfully promiſed the ſaid *C.* he would well and truly pay him the ſaid One Hundred Pounds whenever he ſhould be thereto required. **And** whereas one *G. F.* afterwards (that is to ſay) the Tenth Day of *May*, in the ſaid Year of our Lord One thouſand ſeven hundred and thirty-two, made his promiſſory Note in Writing, bearing Date the Day and Year laſt mention'd, and ſubſcrib'd the ſame with his own Hand, and deliver'd it to the ſaid *A.* and thereby faithfully promiſed, that he the ſaid *G.* would pay to the ſaid *A.* or Order, Fifty Pounds, Six Weeks after Date, for Value received: And afterwards, and before Payment of the ſaid Fifty Pounds, or any Part thereof, to the ſaid *A.* (that is to ſay) the Tenth Day of *June*, in the Year aforeſaid, at the Pariſh and Ward aforeſaid, the ſaid *A.* by an Indorſement on the ſaid Note in Writing, bearing Date the Day and Year laſt mention'd, ſubſcribed with the Hand-writing of the ſaid *A.* directed and appointed the ſaid *G.* to pay the Contents of the ſaid Note to him the ſaid *C.* or his Order, for Value receiv'd. And the ſaid *C.* ſaith, That in Fact, he the ſaid *C.* after the Expiration of the ſaid Six Weeks after the ſaid Date of the ſaid Note, (that is to ſay) the Firſt Day of *July*, in the Year aforeſaid, at the Pariſh and Ward aforeſaid, ſhewed the ſaid *G.* the ſaid Note, with the ſaid Indorſement thereon, and required the ſaid *G.* to pay him the ſaid *C.* the ſaid Fifty Pounds therein contain'd, according to the Tenor of the ſaid Note and Indorſement thereon made as aforeſaid; but he the ſaid *G.* then and there refuſed to pay the ſame to the ſaid *C.* of which the ſaid *A.* afterwards (that is to ſay) the ſaid Firſt Day of *July*, in the Year aforeſaid, at the Pariſh and Ward aforeſaid, had Notice; by reaſon whereof, and by Force of the Statute in that Caſe made and provided, the ſaid *A.* became liable to pay to the ſaid *C.* the ſaid Fifty Pounds, mention'd in the ſaid laſt mention'd Note, and being ſo liable, the ſaid *A.* afterwards (that is to ſay) the Firſt Day of *July*, in the ſaid Year of our Lord, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, in Conſideration thereof, undertook, and faithfully promiſed the ſaid *C.* that he the ſaid

By Force of the Statute became liable to pay, &c.

And being ſo liable promiſed to pay, &c.

Another againſt the Defendant as Drawer, payable on Demand.

That A. made another Note for 100 l. thereby promiſing to pay the ſame on Demand.

And by Force of the Statute became liable, and being ſo liable, promiſed to pay, &c.

Another Declaration againſt the Defendant, as Indorſor.

That G. T. made a Note for 50 l. payable to A.

That A. indorſed it to G.

And by the Indorſement directed it to be paid to A.

That A. indorſed it to the Plaintiff.

That the Plaintiff ſhewed the Note to the Drawer, and requeſted him to pay it.

That the Drawer refuſed.

Notice to the Defendant.

That by Force of the Statute the Defendant became chargeable.

And being ſo chargeable, promiſed to pay, &c.

ſaid *A.* would well and truly pay him the ſaid Fifty Pounds whenever after he ſhould be thereto required.

Another Declaration againſt the Defendant, as a Second Indorſor. That J. M. made a Note payable to S. T.

And whereas, the Tenth Day of *Auguſt*, in the ſaid Year of our Lord, One thouſand ſeven hundred and thirty two, at the Pariſh and Ward aforeſaid, one *J. M.* made a promiſſory Note in Writing, bearing Date the Day and Year laſt mention'd, and ſubſcribed the ſaid Note with his own Hand, and deliver'd the ſame to one *S. T.* and thereby promiſed to pay to the ſaid *S. T.* or Order, One Hundred Pounds, of like lawful Money of *Great Britain*, one Month after Date, for Value receiv'd.

That S. T. indorſed it to W. L.

And the ſaid *S. T.* before Payment of the ſaid laſt mention'd Sum, or any Part thereof, by his Indorſement in Writing upon the ſaid Note, bearing Date the Day and Year laſt mention'd, ſubſcribed with his own Hand at *London* aforeſaid, in the Pariſh and Ward aforeſaid, appointed and directed the ſaid *J. M.* to pay the ſaid One Hundred Pounds mention'd in the ſaid Note to one *W. L.* or his Order, for Value receiv'd.

Who indorſed it to A.

And the ſaid *W. L.* afterwards and before the Expiration of the ſaid Month, after the Date of the ſaid Note, and before Payment of the ſaid One Hundred Pounds therein mention'd, or any Part thereof, by another Indorſement in Writing, bearing Date the Day and Year laſt abovemention'd, ſubſcribed with his own Hand, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, appointed and directed the ſaid *J. M.* to pay the ſaid One Hundred Pounds to the ſaid *A.* at the Time in the ſaid Note for that Purpoſe limited and appointed;

Who indorſed it to the Plaintiff.

And the ſaid *A.* afterwards, and before the Expiration of the ſaid Month, after the Date of the ſaid Note, and before Payment of the ſaid One Hundred Pounds therein mention'd, or any Part thereof, by another Indorſement in Writing, bearing Date the Day and Year laſt abovemention'd, ſubſcribed with his own Hand, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, appointed and directed the ſaid *J. M.* to pay the ſaid One Hundred Pounds to the ſaid *C.* at the Time in the ſaid Note for that Purpoſe limited and appointed; of which ſeveral Indorſements afterwards, the ſaid Tenth Day of *Auguſt*, in the Year laſt abovemention'd, the ſaid *J. M.* had Notice at *London* aforeſaid, in the Pariſh and Ward aforeſaid.

That the Drawer had Notice of the Indorſements.

A Requeſt to the Drawer, and Refuſal.

And the ſaid *C. D.* in Fact ſays, That afterwards, and at the Expiration of one Month from the Date of the ſaid Note laſt mention'd, (that is to ſay) the twelfth Day of *September* following, at the Place aforeſaid, he the ſaid *C. D.* ſhew'd the Note, with the ſeveral Indorſements abovemention'd, thereon made and ſubſcribed, to the ſaid *J. M.* and then and there requeſted him to pay the ſaid Sum of Money contain'd in the ſaid Note, to the ſaid *C. D.* according to the Tenour and Purport of the ſame; but he the ſaid *J. M.* then and there refuſed to pay the ſame; of which the ſaid *A.* afterwards, (that is to ſay) the Day, Year, and Place laſt abovemention'd, had Notice from the ſaid *C.* and the ſaid Sum of Money mention'd in the ſaid laſt mention'd Note, or any Part thereof, not having been paid by the ſaid *J. M.* to the ſaid *A.* by reaſon thereof, and by Force of the Statute in that Caſe made and provided, the ſaid *A.* became chargeable to pay to him the ſaid *C.* the Sum of Money contain'd in the ſaid Note; and being ſo chargeable, the ſaid *A.* afterwards, (that is to ſay) the ſame Day and Year laſt abovemention'd, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, undertook, and faithfully promiſed to pay to the ſaid *C.* the ſaid Sum laſt mention'd, whenever he ſhould be thereto required. Nevertheleſs,

That the Money was not paid, or by the ſaid S. T. or by the ſaid W. L.

That by Force of the Statute the Defendant was chargeable.

And being ſo liable, promiſed to pay, &c.

theleſs, the ſaid *A.* not regarding his ſaid ſeveral Promiſes and Undertakings, but contriving, and frudulently intending to deceive and defraud the ſaid *C.* hath not paid him the ſaid ſeveral Sums of Money, or any Part thereof; altho' the ſaid *A.* afterwards, (that is to ſay) the ſaid Day and Year laſt abovemention'd, and oftentimes afterwards, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, was by the ſaid *C.* thereto requeſted; but the ſaid *A.* hitherto hath, and ſtill doth refuſe ſo to do, whereby the ſaid *C.* ſaith, that he is injur'd and endamaged to the Value of Five Hundred Pounds, and therefore brings this Suit, *and ſo forth.*

Morton againſt Sleddall.

Declaration upon a Bill of Exchange againſt the Drawer, the Perſon upon whom it was drawn refuſing to accept it. Lilly 44.

That the Defendant made a Bill.

Drawn upon Kingſmill Eyre, Eſq;

That Pipon indorſed the ſame to one John Vowler.

Who indorſed the ſame to the Plaintiff.

Averment, that the Perſon upon whom it was drawn refuſed to accept it.

By which he became liable to pay.

Midd. (to wit) *John Morton* complains of *John Sleddall* in the Cuſtody of the Marſhal, *and ſo forth,* for that whereas the ſaid *John Sleddal* the 13th of *April*, in the Year of our Lord 1717, at *Weſtminſter* in the ſaid County, (he then being a Perſon trading, merchandizing, and uſing Commerce, at *Weſtminſter* aforeſaid) according to the Uſage and Cuſtom, of Merchants, made his certain Bill of Exchange in Writing, ſubſcribed with his own Hand, bearing Date the ſame Day and Year, and directed the ſaid Bill of Exchange to one *Kingsmill Eyre*; by which ſaid Bill of Exchange, the ſaid *John Sleddall* required the ſaid *Kingſmill* to pay to one *Thomas Pipon*, or to his Order, the Sum of 20 *l.* twenty Days after Sight of the ſaid Bill, Value received, and to place it to the Account of Subſiſtence, for the Uſe of Captain *Spicer*'s Company of Invalids; which ſaid *Thomas Pipon*, afterwards (*to wit*) the 14th Day of *May*, in the ſaid Year of our Lord at *Weſtminſter* aforeſaid, by his Indorſement upon the ſame Bill of Exchange, made according to the Uſage and Cuſtom of Merchants, order'd the Contents of the ſaid Bill, to be paid to one *John Vowler*, or to his Order; which ſaid *John Vowler* afterwards, (*to wit*) the 27th Day of *May*, in the Year aforeſaid, at *Weſtminſter* aforeſaid, by his Indorſement upon the ſame Bill of Exehange made, according to the Uſage and Cuſtom of Merchants, ordered the Contents of the ſame Bill, to be paid to the ſaid *John Morton*, or to his Order: And the ſaid *John Morton* in Fact ſays, that afterwards (*to wit*) the 1ſt Day of *June* in the Year aboveſaid, at *Weſtminſter* aforeſaid, he ſhewed the ſaid *Kingsmill Eyre* the ſaid Bill, with the Indorſement thereupon made, and then and there required him to accept the ſaid Bill, which the ſaid *Kingsmill* then and there refuſed to do, or ever to pay the ſaid 20 *l.* therein mentioned; of which Premiſſes the ſaid *John Sleddall* afterwards, (*to wit*) the 8th Day of *June*, in the Year aforeſaid, at *Weſtminſter* aforeſaid, had Notice, by Reaſon of which Premiſſes, he the ſaid *John Sleddall*, according to the Uſage and Cuſtom of Merchants, became, and is chargeable to pay to the ſaid *John Morton*, the ſaid 20 *l.* mentioned in the ſaid Bill of Exchange. And the ſaid *John Sleddall* being ſo chargeable, afterwards, (*to wit*) the ſame Day and Year at *Weſtminſter* aforeſaid, in Conſideration, thereof, undertook, and to the ſaid *John Morton*, then and there faithfully promiſed, that he ſaid *John Sleddall*, would well and truly content and pay to the ſaid *John Morton*, the ſame 20 *l.* And alſo whereas the ſaid *John Sleddall*, the 30th Day of *Auguſt*, in the Year aforeſaid, was indebted to the ſaid *John Morton*,

ton, in 80 *l.* for Money by the ſaid *John Sleddall* before that Time received, to the Uſe of the ſaid *John Morton*; and being ſo indebted, the ſaid *John Sleddall*, the Day and Year laſt aboveſaid at *Weſtminſter* aforeſaid, in Conſideration thereof, undertook, and then and there faithfully promiſed to the ſaid *John Morton*, that he the ſaid *John Sleddall* would well and truly content and pay to the ſaid *John Morton*, the ſaid 80 *l.* whenever he ſhould be thereto required. Nevertheleſs the ſaid *John Sleddall* little regarding his ſaid ſeveral Promiſes and Undertakings, but wickedly and fraudulently intending, craftily and ſubtilly to deceive and defraud him the ſaid *John Morton* in that behalf, hath not paid the ſaid ſeveral Sums of Money, or any Part thereof to the ſaid *John Morton*, altho' the aforeſaid *John Sleddall* was requeſted thereto by the ſaid *John Morton* afterwards, (*to wit*) the 31ſt of *Auguſt*, in the Year aforeſaid, and often after that Time at *Weſtminſter* aforeſaid, but always hitherto hath, and ſtill doth refuſe ſo to do, to the Damage of the ſaid *John Morton*, 80 *l.* for which he brings this Suit, *and ſo forth*.

Belaſyſe against **Heſter.**

Trin. 9 *W.* 3. *Roll* 493.

Declaration upon a Bill of Exchange by the Proſecutor to whom the Money was payable againſt the Acceptor. Lut. 1589.

Surrey, (to wit) *John Heſter* was attached by his Majeſty's Writ of Privilege, iſſuing out of this Court, to anſwer to *Richard Belaſyſe*, Eſq; one of the Clerks of *John Cooke*, Eſq; Principal Prothonotary of his Majeſty's Court of Common Bench, according to the Liberties and Privileges of the ſame Court, for the ſaid Prothonotary, or any of his Clerks, and other Officers of the ſame Bench, from the Time whereof the Memory of Man is not to the Contrary uſed and approved of in the ſame, of a Plea of Treſpaſs upon the Caſe, *and ſo forth*. And whereof the ſaid *Richard* in his proper Perſon complains, that whereas the firſt Day of *May*, in the Year of our Lord 1697, and long before, as well the ſaid *John Heſter*, as one *William Greveſon*, were Perſons trading in the Way of Merchandize, and negotiating and uſing Commerce within this Kingdom of *England*, (*to wit*) at *Southwark* in the ſaid County of *Surrey*. And the ſaid *William* the ſame Day and Year at *Southwark* aforeſaid, according to the Cuſtom of Merchants, made his certain Bill of Exchange, bearing Date the ſame Day and Year, directed to the ſaid *John Heſter*, and thereby requiring the ſaid *John Heſter* in ten Days after Sight of the ſaid Bill of Exchange, to pay to the ſaid *Richard* by the Name of *Richard Belaſyſe*, Eſq; or to his Order, the Sum of ten Pounds for the like Sum received of Mr. *William Wilkinſon*. And the aforeſaid *John Heſter* afterwards, (*to wit*) the 7th Day of *May* in the ſaid Year of our Lord 1697, at *Southwark* aforeſaid, had Notice, and a Sight of the ſaid Bill of Exchange, and according to the Uſage and Cuſtom of Merchants, then and there accepted the ſame; and by Reaſon thereof, he the ſaid *John Heſter* became liable to pay to the ſaid *Richard* the ſaid 10 *l.* in the ſame Bill of Exchange, mentioned according to the Tenor and Effect of the ſaid Bill; and being ſo liable, the aforeſaid *John Heſter* afterwards (*to wit*) the ſame Day and Year laſt aboveſaid, at *Southwark* aforeſaid, in Conſideration thereof undertook, and there faithfully promiſed the ſaid *Richard*, that

That the Defendant and one Greveſon were Merchants.

That Greveſon made a Bill of Exchange.

Drawn upon John Heſter the Defendant; payable to Belaſyſe.

That he accepted the ſame.

By which he became liable, &c.

that he the ſaid *John Heſter* would well and truly pay to the ſaid *Richard*, the ſaid Money contained in the ſaid Bill according to the Tenor and Effect of the ſame. And alſo whereas the aforeſaid *John Heſter*, the ſaid Day and Year aboveſaid, was indebted to the ſaid *Richard*, in another 10 *l*. of lawful Money of *England*, for Money before that Time had and received by the ſaid *Jhon Heſter*, to the Uſe of the ſaid *Richard*. And being ſo indebted, the ſaid *John Heſter* afterwards, (*to wit*) the ſame Day and Year at *Southwark* aforeſaid, in Conſideration thereof, undertook, and then and there faithfully promiſed the ſaid *Richard*, that he the ſaid *John Heſter* would well and truly content and pay the ſaid Sum of 10 *l*. laſt mentioned, to the ſaid *Richard*, whenever he ſhould be thereto required. Nevertheleſs, the ſaid *John Heſter*, not regarding his ſeveral Promiſes and Undertakings, but contriving, and fraudulently intending to deceive and defraud the ſaid *Richard* (altho' the ſaid *John* was by the ſaid *Richard*, on the Tenth Day of *May*, in the Year of our Lord One Thouſand Six Hundred and Ninety-ſeven; and often afterwards, at *Southwark* aforeſaid, requeſted thereto, yet the ſaid *John* hath not contented or paid to the ſaid *Richard* the ſaid ſeveral Sums, or any Part thereof, but hitherto hath, and ſtill doth altogether refuſe ſo to do, to the Damage of the ſaid *R*. Twenty Pounds; and therefore he brings this Suit, *and ſo forth*.

Herle againſt **Jenney** and others.

Trinity Term, the Tenth of King *George*.

That the Defendant drew a Bill of Exchange.

London (to wit): *Thomas Jenney*, late of the City of *Norwich*, in the County of the ſaid City, Eſquire; *John Theophilus Deſaguliers*, late of the Pariſh of St. *Margaret's*, *Weſtminſter*, in the County of *Middleſex*, Doctor of Laws; *Thomas Moore*, late of *Lincolns Inn*, in the County of *Middleſex*, Eſquire; *Andrew Robinſon*, late of the Pariſh of St. *Margaret's*, *Weſtminſter*, in the County of *Middleſex*, Eſquire; *Thomas Burdus*, late of the Pariſh of St. *Margaret's*, in the County of *Middleſex*, Eſquire; *John Lawton*, late of the ſame Place, Gentleman; and *William Branthwait*, late of the *Middle Temple*, *London*, Eſquire, were attached to anſwer to *Nicholas Herle*, Eſquire, of a Plea of Treſpaſs on the Caſe; and whereupon, the ſaid *Nicholas*, by *James Rider*, his Attorney, complains, That whereas the ſaid *T. J. J. T. D. T. M. A. R. T. B. J. L.* and *W. B.* together with *John Collier*, lote of the Pariſh of St. *Martin's in the Fields*, in the County of *Middleſex*, Gent. and *Robert Hacket*, late of *Weſtminſter*, in the County of *Middleſex*, Eſquire, (which ſaid *John Collier* and *Robert Hackett* now ſtand outlaw'd by Proceſs, for that Purpoſe had in this Court, upon the ſaid Writ, at the Suit of the ſaid *Nicholas*, of the Plea aforeſaid) the Twenty-ſeventh Day of *September*, in the Year of our Lord One Thouſand Seven Hundred and Twenty, at *London*, in the Pariſh of St. *Mary* le *Bow*, in the Ward of *Cheap*, according to the Uſage and Cuſtom of Merchants, Time out of Mind uſed and approved of, made their Bill of Exchange, ſubſcribed with their own Hands, bearing Date the ſame Day and Year, and directed the ſaid Bill of Exchange to one *John Pratt*, Eſquire, by which ſaid Bill of Exchange, the ſame *Thomas*, *John*, *Theophilus*, *Thomas*, *Andrew*, *Thomas*,

Directed to John Pratt, Eſq; thereby requiring him to pay to the Plaintiff 1945 l. on Demand.

That Plaintiff gave Notice of the Bill to the Perſon upon whom it was drawn.

That he refuſed to accept it.

That by the Cuſtom of Merchants they became liable.

And being ſo liable, promiſed to pay.

That the Defendants drew another Bill. Whereby they requir'd the ſaid John Pratt to pay 1945 l. out of Money in his Hands, belonging to the Proprietors of the Devonſhire Mines, &c.

That he refuſed to accept it.

John, *William*, *John* and *Robert* requeſted him the ſaid *John Pratt*, to pay to the ſaid *Nicholas Herle*, upon Demand, One Thouſand Nine Hundred Forty-five Pounds: And afterwards (to wit) the Twenty First Day of *October*, in the ſaid Year, One Thouſand Seven Hundred and Twenty, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, the ſaid *Nicholas* gave Notice to the ſaid *John* of the ſaid Bill of Exchange, and then and there required him to accept the ſame, and to pay the Money therein contain'd, according to the Uſage and Cuſtom of Merchants aforeſaid, and according to the Tenor of the ſame Bill; but the ſaid *John Clark* then and there refuſed to accept the ſame Bill of Exchange, or to pay the Money therein contain'd; and the ſaid *Nicholas* afterwards (to wit) the ſame Day and Year laſt mention'd, gave Notice thereof to the ſaid *T. J. J. T. D. T. M. A. R. T. B. J. L. W. J. C.* and *R.* (to wit) at *London* aforeſaid, in the Pariſh and Ward aforeſaid, by reaſon of which Premiſes, and alſo by Force of the ſaid Cuſtom of Merchants, Time out of Mind uſed and approved of, they the ſaid *T. J. J. T. T. M. A. T. B. J. L. W. J. C.* and *R.* according to the Uſage and Cuſtom of Merchants, became, and are liable to pay to the ſaid *Nicholas* the ſaid Sum ſpecify'd in the ſaid Bill, according to the Tenour of the ſame; and they the ſaid *T. J. J. T. T. M. A. T. B. J. L. W. J.* and *R.* being ſo liable afterwards, (to wit) the ſame Day and Year laſt mention'd, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, in Conſideration of the Premiſſes, undertook, and then and there faithfully promiſed, that they the ſaid *T. J. J. T. T. M. A. T. B. J. L. W. J.* and *R.* would well and truly content and pay to the ſaid *N.* the ſaid Sum of Money mention'd in the ſaid Bill, whenever they ſhould be thereto required. **And** whereas the ſaid *T. J. J. T. A. T. J. J. W.* and *R.* afterwards (to wit) the ſaid Twenty-ſeventh Day of *September*, in the Year One Thouſand Seven Hundred and Twenty aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, according to the Uſage and Cuſtom of Merchants aforeſaid, Time out of Mind uſed and approved of, made a certain other Bill of Exchange, ſign'd with their own Hands, bearing Date the ſame Day and Year laſt mention'd, and directed the ſame Bill of Exchange to the ſaid *John Pratt*, Eſq; by which ſaid Bill of Exchange laſt mention'd, the ſame *T. J. J. D. T. M. A. T. J. L. W. A. T. B. L. J. C.* and *R.* requeſted the ſaid *John Pratt* to pay to the ſaid *Richard*, upon Demand, another Thouſand Nine Hundred Forty-five Pounds out of Money in the Hands of the ſaid *John Pratt*, belonging to the Proprietors of the *Devonſhire* Mines and Quarries, being Part of the Conſideration-Money for the Purchaſe of *Weſt Buckland*. **And** afterwards, (to wit) the ſaid Firſt Day of *October*, in the ſaid Year One Thouſand Seven Hundred and Twenty, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, he the ſaid *Nicholas* gave Notice to the ſaid *J. Pratt* of the ſaid Bill of Exchange laſt mention'd, and then and there required him to accept the ſaid Bill, according to the Uſage and Cuſtom of Merchants, and to pay the ſaid Bill laſt mention'd, according to the Tenor of the ſame, but the ſaid *John Pratt* then and there refuſed to accept the ſaid Bill laſt mention'd, or to pay the ſame: And the ſaid *Nicholas* afterwards (to wit) the ſame Day and Year laſt mention'd, gave Notice thereof to the ſaid *T. J. T. T. A. T. J. J. W.* and *R.* (to wit) at *London* aforeſaid, in the Pariſh and Ward

That by reaſon thereof the Defendant became liable, and being ſo liable promiſed to pay, &c.

aforeſaid, and by reaſon thereof, and by Virtue of the Cuſtom of Merchants aforeſaid, the ſaid *T. J. T. T. A. T. J. J. W.* and *R.* according to the ſaid Cuſtom, then and there became, and are liable to pay to the ſaid *Nicholas* the ſaid Sum of Money ſpecified in the ſaid laſt mention'd Bill, according to the Tenor of the ſame; and being ſo liable, the ſaid *T. J. T. T. A. T. J. J. W.* and *R.* afterwards, the ſame Day and Year laſt mention'd, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, in Conſideration thereof, undertook, and then and there faithfully promiſed to pay to the ſaid *N.* the Sum of Money mention'd in the ſaid laſt mention'd Bill, whenever after they ſhould be thereto required.

Then comes an *Indebitat' Aſſumpſit* for Money due for, and unpaid, upon buying ſeveral Lands and Tenements of the Plaintiff by the Defendants.

Another *Indebitat' Aſſumpſit* for Money lent.

The like for Money had and receiv'd.

This Caſe is reported in *Modern Caſes* in Law and Equity 265, by the Name of *Jenney* and *Heale*, but the true Name of the Caſe is upon the Writ of Error, *Jenney* and others and *Herle*.

And altho' in the Common Pleas the Plaintiff had Judgment, yet this Judgment was reverſed in the Court of King's Bench; and what was inſiſted upon for the Defendant in Error, in Maintenance of the Judgment, was, that this was a good Bill of Exchange, inaſmuch as it had all the Qualities of ſuch a Bill, that is, the Drawer, Payer and Drawee, and that a Set Form of Words was not neceſſary in Bills of Exchange, nor that it muſt be between Merchants, on the Reaſon of the Caſe of *Bellaſis* and *Heſter*, in *Lut.* 589.

And that the Drawing and ſigning every Bill of Exchange imply'd a Conſideration for ſo doing; ſo the expreſſing the Money to come out of a certain Fund did not make it worſe.

But in order to reverſe this Judgment, it was inſiſted on the other Side, That this was not a good Bill of Exchange, becauſe contingent, and payable only in Caſe that the Perſon, upon whom it was drawn, had ſufficient in his Hands out of ſuch Fund; for if the Perſon had not ſufficient in his Hands, he might have refuſed to accept it, and could not be charged for Non-acceptance, therefore not a perfect and compleat Bill of Exchange, within the Intention of the Law, that favours Bills of Exchange for the Benefit of Trade, becauſe they are to be negotiable.

And it was ſaid by the Court, that this was no more than a Direction or Appointment to the Caſhier, to pay the Money, and doth not anſwer the Neceſſity of Trade; for as it is not negotiable as a Bill for Money, it would be hard to charge the Drawer; for if he might be charg'd with ſuch a Note, then every Man, who gives his Steward an Order or Authority to pay Money, might be charg'd for Non-payment.

It was ſaid by the Court, that Cuſtom had carry'd Bills of Exchange a great Way, but never ſo far as to make them payable out of a particular Fund; and for theſe Reaſons, and ſome others, (but theſe the moſt material) the Judgment was reverſed.

John

John Lewin againſt **Francis Brunetti**, on a Writ of Error in the Exchequer-Chamber, upon a Judgment in the King's Bench.

Pleas before our Sovereign Lord the King at Weſtminſter, *of the Term of the Holy* Trinity, *in the Fourth Year of the Reign of our Sovereign Lord* James *the Second, King of* England, *&c.* Roll 114.

Declaration in an Action upon a Bill of Exchange, which the Plaintiff had paid for the Honour of the Drawer of the Bill. Lutw. 896.

That London **is an** ancient **City, and that** Leghorn **is** an ancient **City.**

That a Uſance in Bills of Exchange from London to Leghorn **is Three Months.**

And a Cuſtom for the Drawing of One, Two, Three, or Four Bills of Exchange of the ſame Tenour.

And if ſuch Merchant **directs ſuch Bills to any Merchants reſiding at** Leghorn.

And if ſuch Merchant, upon whom it was drawn refuſes Acceptance.

And if another Merchant ſubſcribes to pay, for the Honour of the Drawer.

Be it remember'd, That heretofore, (that is to ſay) in *Eaſter* Term laſt paſt, came before our Sovereign Lord the King at *Weſtminſter*, *Francis Brunetti*, Merchant, by *G. W.* his Attorney, and then brought here into the Court of our ſaid Sovereign Lord the King, a certain Bill againſt *John Lewen*, Merchant, in the Cuſtody of the Marſhal, *and ſo forth*, in a Plea (or in an Action) of Treſpaſs upon the Caſe, and there are Pledges to proſecute (to wit) *John Doe* and *Richard Roe*, which ſaid Bill followeth in theſe Words (to wit): ‘*London* (to wit) *Francis Brunetti*, Merchant, complains of *John Lewin*, Merchant, being in the Cuſtody of the Marſhal of the *Marſhalſey*, of our Sovereign Lord the King, before the King himſelf, for this Cauſe (that is to ſay) That whereas the City of *London* is, and Time out of Mind hath been an ancient City; And whereas the City of *Leghorn*, in Parts beyond the Seas, is, and Time out of Mind hath been an ancient City: And whereas an Uſance mention'd in any Bill of Exchange, directed by any Merchant reſiding in *London*, for the Time being, to any other Merchant dwelling in the City of *Leghorn*, for the Time being, is, and during the Time aforeſaid hath been, according to the Cuſtom uſed among Merchants, Three Months from the Date of ſuch Bill of Exchange. **And** whereas, at *London*, aforeſaid, (to wit) at the Pariſh of St. *Mary le Bow*, in *Cheap* Ward; there is, and Time out of Mind hath been a Cuſtom uſed and approved of among Merchants, and other Perſons trading and uſing Merchandize at *London*, and Merchants at the City of *Leghorn* aforeſaid, (that is to ſay) that where any Merchant dwelling or reſiding at *London* aforeſaid, hath drawn any Bill or Bills of Exchange, according to the Uſage of Merchants, (to wit) a firſt, ſecond, third, and fourth, of one and the ſame Tenour and Effect, and for one and the ſame Sum, and directed ſuch Bills of Exchange to any Merchant reſiding at *Leghorn* aforeſaid, thereby requiring ſuch Merchant, to whom ſuch Bill hath been ſo directed, to pay at a Uſance, any Sum of Money ſpecify'd in ſuch Bill of Exchange, to any Merchant therein named, or his Order, for Value receiv'd from the ſame Merchant to whom ſuch Bill of Exchange hath been appointed to be paid, and to place the ſame to Account, as by Advice; and if ſuch Merchant, to whom Payment of ſuch Bill of Exchange hath been ſo directed, refuſe to accept the ſame, upon a Requeſt made to him for that Purpoſe, by which, ſuch Bill of Exchange, according to the Uſage of Merchants, hath been duly proteſted, for Non-acceptance thereof: And if any other Merchant, or other Perſon exerciſing Commerce, upon Notice thereof given to him of ſuch Proteſt of ſuch Bill of Exchange for Non-acceptance thereof, on the Behalf, and for the Honour of ſuch Merchant who had drawn ſuch Bill, undertook to pay ſuch Sum of Money mention'd in the ſame, and ſubſcribed any Note, according to the Uſage of Merchants, upon the Return thereof: And if ſuch Merchant to whom, or to whoſe Order, ſuch Bill had ſo been appointed to be paid by any Indorſement made upon any of the ſaid Four Bills of Exchange, according to the Uſage and Cuſtom of Merchants, order'd the Payment of the ſaid Sum of Money, mention'd in the ſaid Bill to any other Merchant named in ſuch Indorſement, for Value receiv'd from the ſame Merchant: And if ſuch Merchant in ſuch Indorſement named, or his Factor, lawfully Authoriz'd for that Purpoſe, by any Indorſement upon the ſame Bill of Exchange, according to the Cuſtom of Merchants, ordered the Payment of the ſaid Sum of Money mention'd in the ſame Bill, to be made to any other Merchant named in the ſaid Indorſement, or his Order, for Value receiv'd from ſuch Merchants: And if ſuch Merchant, in ſuch laſt Indorſement named, by any other Indorſement upon the ſame Bill of Exchange, according to the Cuſtom of Merchants, order'd the Payment of the Sum of Money mention'd in the ſame Bill, to be made to any other Merchant, or his Order, for Value receiv'd upon Account: And if any ſuch Merchant, in ſuch laſt Indorſement named, by any other Indorſement upon the ſame Bill of Exchange, according to the Cuſtom of Merchants, ordered the Payment of the ſame Sum of Money mention'd in the ſame Bill, to be made to any other Merchant, or his Order for Value in Exchange: And if ſuch Merchant, to whom ſuch Bill of Exchange had ſo been directed, refuſed, or neglected to pay ſuch Sum in ſuch Bill of Exchange mention'd, according to the Tenour and Effect of the ſaid Bill of Exchange, and the ſeveral Indorſements thereon made; but inſtead thereof, permitted the ſame Bill of Exchange to be proteſted, according to the Cuſtom of Merchants, for Non-payment thereof; and if any other Merchant or Merchants, upon Notice of ſuch Proteſt, for Non-payment of ſuch Bill of Exchange, on the Behalf, and for the Honour of ſuch Merchant to whom, or to whoſe Order, the ſaid Sum of Money mention'd in the ſame Bill of Exchange, had ſo been appointed to be paid, and who ſo firſt indorſed the ſaid Bill, pay'd the Sum of Money mention'd in the ſame, ſo proteſted as above for Non-payment thereof, and all Charges, Coſts and Expences, for Non-payment of the ſame Bill of Exchange, due and payable, according to the Uſage of Merchants, to ſuch Merchant, in ſuch laſt Indorſement named, to whom Payment thereof by the ſame had been ſo appointed to be made; then ſuch Merchant, or other Perſon exerciſing Commerce, who, on the Behalf, and for the Honour of ſuch Merchant, who made ſuch Bill of Exchange, had undertaken to pay the Money mention'd in ſuch Bill, upon Notice given him of ſuch Proteſt of ſuch Bill of Exchange for Non-payment thereof, and of the Payment of the Sum of Money mention'd in the ſame Bill, together with all Charges, Coſts, and Expences on the Part of the Merchant, to whom, or to whoſe Order, the Sum mention'd in the ſame Bill was appointed to be paid, and who firſt indorſed the ſame Bill, became chargeable, and hath been accuſtom'd, during all the Time aforeſaid, and ought to pay the Sum of Mo-

And if ſuch Merchant to whom the ſame is payable, indorſes the ſaid Bill; and ſuch Indorſee indorſes the ſaid Bill; and ſuch laſt Indorſee indorſes the Bill; and ſuch laſt Indorſee indorſes the Bill; and if ſuch laſt Indorſee indorſes the ſaid Bill; and if ſuch Merchant, to whom the Bill is directed, refuſes Payment, and the Bill is proteſted; and if any other Merchant, for the Honour of the Drawer, pays ſuch Bill, and the Coſts and Charges; then ſuch Perſon ſo undertaking to pay the ſaid Bill for the Honour of the Drawer, is liable to pay the ſaid Bill.

Note; *'Tis now not uſual, but needleſs, thus to ſet forth the Cuſtom of Merchants; and the beſt Way of declaring is as in* Fol. 108. Poſtea.

‘ ney mention’d in ſuch Bill of Exchange, (the ſame, or any Part ‘ thereof, not being paid upon any of the ſaid Four Bills of Exchange) ‘ and all Charges, Coſts, and Expences for Non-payment of the ſaid ‘ Sum of Money, in the ſaid Bill of Exchange proteſted for Non- ‘ payment thereof to ſuch Merchant, to whom the Payment of the ‘ ſame was appointed to be made:’

That one A. H. being a Merchant, made four Bills of Exchange, of equal Date and Tenour, directed to Jacob Abendano;

and by the firſt requeſted him to pay the ſaid firſt Bill to the Order of F. B. 500 Pieces of Foreign Money.

And whereas on the Nineteenth ‘ Day of *July*, One thouſand ſix hundred eighty-ſix, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, one *Abraham Henriques Valentine*, then and there exerciſing the Trade of a Merchant, according to the Cuſtom of Merchants aforeſaid, made Four Bills of Exchange, all of them bearing Date the ſame Day and Year, and all of them of the ſame Tenour and Effect, and for one and the ſame Sum, and directed the ſaid Bills of Exchange to one *Jacob Abendano*, then at *Leghorn*, in Parts beyond the Seas, trading to, and uſing Commerce at *London* aforeſaid, in the Pariſh and Ward aforeſaid: And by the firſt of the ſaid Four Bills of Exchange, the ſaid *Abraham* requeſted the ſaid *Jacob* to pay, at a Uſance, that his firſt Bill of Exchange, to the Order of the ſaid *Francis B——*, then reſiding at *London* aforeſaid, in the Pariſh and Ward aforeſaid, and there exerciſing the Trade of a Merchant, Five Hundred Pieces of Foreign Money, call’d Pieces of Eight *Mexico* and *Seville*, for Value from the ſame *F. B.* and to place the ſame to Account, as by Advice; which ſaid Bill the ſaid *Francis* afterwards, (to wit) on the Ninth Day of *September*, in the ſaid Year, at *Leghorn* aforeſaid (to wit) at *London* aforeſaid, in the ſaid Pariſh and Ward, ſhewed to the ſaid *Jacob Abendano*, and then and there required the ſaid *J. A.* to accept the ſaid Bill, according to the Cuſtom of Merchants;

J. A. refuſed to accept it.

but the ſaid *J. A.* then and there altogether refuſed to accept the ſame, by reaſon of which, the ſaid Bill of Exchange afterwards (to wit) on the ſame Ninth Day of *September*, in the ſaid Year, at *Leghorn* aforeſaid (to wit) at *London* aforeſaid, in the ſaid Pariſh and Ward, according to the Cuſtom of Merchants, was duly proteſted for Non-acceptance thereof:

J. L. the Defendant having Notice,

Of all which ſaid Premiſſes, the ſaid *John Lewin* afterwards, (to wit) the ſame Ninth Day of *September*, in the ſaid Year, at *London* aforeſaid, in the ſaid Pariſh and Ward, reſiding and exerciſing Commerce there, had Notice, and then and there ſaw the ſaid Proteſt in Writing, and thereupon the ſaid *John Lewin* afterwards (to wit) the ſame Day and Year, at *London* aforeſaid, in the ſaid Pariſh and Ward, made and ſubſcribed with his own Hand, according to the Cuſtom of Merchants, a certain Note in Writing, on the Behalf, and for the Honour of the ſaid *Abraham*, and thereby promiſ’d to pay that Bill of Exchange upon the Return thereof.

accepted to pay, for the Honour of the Drawer.

And whereas the ſaid *Abraham*, by the ſecond Bill of the ſaid Four Bills of Exchange, required the ſaid *Jacob*, at a Uſance, to pay that his Second Bill of Exchange, (his firſt not being paid) to the Order of the ſaid *F.* Five Hundred Pieces of Foreign Money, call’d Pieces of Eight of *Mexico* and *Seville*, for Value of the ſaid *F.* and to place the ſame to Account, as by Advice.

T. indorſed the ſecond Bill to the Order of A. de Coſta.

And whereas the ſaid *Francis* afterwards (to wit) the Day and Year aforeſaid, at *London* aforeſaid, in the ſaid Pariſh and Ward, according to the Cuſtom of Merchants, by his Indorſement upon the ſaid Second Bill of Exchange, required the ſaid *Jacob* to pay to the Order of one *Alvarez de Coſta*, then exerciſing the Trade of a Merchant, named in the ſaid Indorſement, the aforeſaid Five Hundred Pieces of Foreign

Money, mention'd in the ſaid indorſed Bill of Exchange, for Value of him receiv'd. And whereas one *Joaz Mendes de Coſta*, Factor to the ſaid *Alvarez de Coſta*, (lawfully authorized) the ſame Day, Year, and Place, by an Indorſement upon the ſaid Bill of Exchange, according to the Cuſtom of Merchants, required the ſaid *Jacob* to pay to the Order of one *Manuel de Vega*, then exerciſing the Trade of a Merchant, named in the ſaid Indorſement, the ſaid Five Hundred Pieces of Foreign Money, mention'd in the ſaid indorſed Bill of Exchange, for Value on Account. And whereas the ſaid *Manuel de Vega*, the ſame Day and Year, at *Amſterdam*, (that is to ſay) at *London* aforeſaid, in the ſaid Pariſh and Ward, by an Indorſement upon the ſaid Bill of Exchange, according to the Cuſtom of Merchants, required the ſaid *Jacob* to pay to the Order of one *Paolo* and *Jeronimo*, then exerciſing the Trade of Merchants, named in that Indorſement, the aforeſaid Five Hundred Pieces of Foreign Money, mention'd in the ſaid indorſed Bill of Exchange, for Value of the ſaid *P.* and *J.* And whereas the ſaid *P.* and *J.* the ſame Day, Year and Place laſt aboveſaid, by their Indorſement upon the ſaid Bill of Exchange, according to the Cuſtom of Merchants, requeſted the ſaid *Jacob* to pay to the Order of one *Aurelio Rezonica*, then exerciſing the Trade of a Merchant, named in that Indorſement, the ſaid Five Hundred Pieces of Foreign Money mention'd in the ſaid indorſed Bill of Exchange, for Value upon Account. And whereas the ſame *Aurelio*, the ſame Day and Year, at *Venice*, (to wit) at *London* aforeſaid, in the ſaid Pariſh and Ward, by an Indorſement upon the ſame Bill of Exchange, according to the Cuſtom of Merchants, requeſted the ſaid *Jacob* to pay to the Order of one *Jacob Arges*, then exerciſing the Trade of a Merchant, named in the ſaid Indorſement, the ſaid Five Hundred Pieces of Foreign Money, mention'd in the ſaid indorſed Bill of Exchange, for Value in Exchange, with *Valerio Cypriani*, which ſaid Bill of Exchange, the ſaid *Francis* afterwards (that is to ſay) the Twentieth Day of *October*, in the ſaid Year, at *Leghorn* aforeſaid, (to wit) at *London* aforeſaid, in the ſaid Pariſh and Ward, ſhewed to the ſaid *Jacob Abendano*, and then and there required him to pay the ſaid Bill, according to the Tenour and Effect of the ſame, and the Indorſement thereon made; but the ſaid *Jacob Abendano* then and there totally refuſed ſo to do; by which the ſame Bill of Exchange afterwards (to wit) the ſame Day, Year and Place, was proteſted in Writing for Non-payment thereof in due Manner, according to the Cuſtom made Uſe of among Merchants for that Purpoſe. And thereupon, one *P. A. B.* and *L. A. B.* afterwards (to wit) the Day and Year aforeſaid, then exerciſing the Trade of Merchants, having Notice of the ſaid Proteſt of the ſaid ſecond Bill of Exchange for Non-payment thereof, then and there, in the Behalf, and for the Honour of the ſaid *Francis*, paid the ſaid Five Hundred Pieces of Foreign Money mention'd in the ſaid Bill of Exchange, and the Charges, Coſts and Expences, amounting to Ten Pounds of lawful Money of *England*, for Non-payment thereof, *to the ſaid* **Jacob Arges**, *to whom the ſaid Bill was laſt indorſed.* Of all which Premiſſes the ſaid *John Lewin*, afterwards (to wit) the Firſt Day of *December*, in the ſaid Year, at *London* aforeſaid, in the ſaid Pariſh and Ward, had Notice, and then and there ſaw the

J. M. de Coſta, lawfully authorized, indorſed the ſame to the Order of M. de Vega.

Manuel de Vega indorſed the ſame to Paolo and Jeronimo Parenſi.

Who indorſed the ſame to A. R.

Who indorſed the ſame to J. A.

J. A. refuſed to pay the Bill.

That one P. A. B. and L. A. B. paid the Bill for the Honour of the Drawer.

That by reaſon thereof the Defendant became liable to pay the ſaid Money. And being liable, promiſed to pay.

the ſaid Bill of Exchange ſo return'd as above; by Means whereof and by Reaſon of the Premiſſes, the aforeſaid *J. L.* by the Cuſtom of Merchants, and the ſubſcribing the aforeſaid Note, became chargeable with the Payment of the ſaid Five Hundred Pieces of Foreign Money mention'd in the ſaid Bill of Exchange, and all Charges, Coſts and Expences to the ſaid *Francis*, by Non-payment thereof: And thereupon the aforeſaid *J. L.* afterwards (to wit) the ſame Day and Year, at *London* aforeſaid, in the ſaid Pariſh and Ward, in Conſideration of the Premiſſes, undertook, and then and there faithfully promiſed, that he the ſaid *John* would well and truly content and pay to the ſaid *Francis* the ſaid Five Hundred Pieces of Foreign Money, or the Value thereof, being One Hundred and Twelve Pounds of lawful Money of *England*, and the Charges, Coſts and Expences aforeſaid amounting to the Sum of Ten Pounds, whenever he ſhould be thereto required: Nevertheleſs, the ſaid *John*, not regarding his Promiſes and Undertakings aforeſaid, but contriving, and fraudulently intending in this Particular craftily and ſubtily to defraud and deceive the ſaid *Francis*, hath not paid to the ſaid *Francis* the ſaid Five Hundred Pieces of Foreign Money, or the Value thereof, being One Hundred and Twelve Pounds, or any Part thereof, nor hath in any Manner made him Satiſfaction for the ſame; altho' the ſaid *John* afterwards (to wit) the Firſt Day of *January*, in the Year aforeſaid, at *London* aforeſaid, in the ſaid Pariſh and Ward, was thereto required, but altogether hath, and ſtill doth refuſe ſo to do, to the Damage of the ſaid *Francis* One Hundred and Fifty Pounds; and therefore he brings this Suit; together with this, That the ſame *Francis* is ready to verify, that the ſaid Third and Fourth Bills of the ſaid Four Bills of Exchange were never paid by the ſaid *Jacob Abendano*.

Upon this it was pleaded, That he made no ſuch Promiſe, and a Verdict found for the Plaintiff, and a Writ of Error brought and alledg'd in Behalf of the Plaintiff in Error, that it did not appear that the Money was paid to the laſt Indorſee, for want of the Words **Jacob Arges**, &c. *inſerted by me, as may be ſeen above, where they are in a different Character; but it being after a Verdict, it was held,* That it ſhall be intended, that the Money was paid where it ought to have been.

Death againſt **Serwonters** on a Writ of Error in the Exchequer Chamber, upon a Judgment given in the King's Bench.

Pleas *before our Sovereign Lord the King at* Weſtminſter, *of the Term of St.* Hillary, *in the 36th and 37th Years of our late Sovereign Lord* Charles *the Second, late King of* England, *and the firſt Year of the Reign of our Sovereign Lord* James *the Second, now King of* England, *and ſo forth.* Roll *669*.

London (to wit): **Be it remembered** that heretofore (*that is to ſay*) in the Term of St. *Michael* laſt paſt, came *Cornelius Serwonters* Merchant, before his late Majeſty *Charles* the Second, late King of *England*, by *John Green* his Attorney at *Weſtminſter*; and then brought there into his ſaid Majeſty's Court, his certain Bill againſt *Thomas Death* Merchant, in the Cuſtody of the Marſhal, *and ſo forth*, of a Plea of Treſpaſs upon the Caſe, and the Pledges of proſecuting are *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words. **London** (*ſſ.*) *Cornelius Serwonters* complains of *Thomas Death* Merchant, in the Cuſtody of the Marſhal of the *Marſhalſea*, of our Sovereign Lord the King before the King himſelf, For this Cauſe (that is to ſay) that whereas the City of *London* is, and Time out of Mind hath been an ancient City, and in the ſame, (*that is to ſay*) in the Pariſh of St *Mary le Bow*, in *Cheap* Ward, according to the Uſage, and an ancient Cuſtom, Time out of Mind uſed and approved of among Merchants, trafficking from thr City of *Venice* beyond Sea, to the ſaid City of *London*, a Uſance mentioned in any Bill of Exchange directed by any Merchant reſiding at *Venice* aforeſaid, to any Merchant reſiding in *London* aforeſaid, doth, and during all the Time aforeſaid, hath conſiſted of the Space of three Months, from the Day of the Date of ſuch Bill of Exchange. And whereas there is, and Time out of Mind hath been, an ancient and laudable Cuſtom, uſed and approved of in the ſaid City of *London*, at the Pariſh and Ward aforeſaid, among Merchants reſiding at *Venice* aforeſaid, and Merchants reſiding at *London* aforeſaid, That if any Merchant reſiding at *Venice* aforeſaid, upon Receipt of any Sum of Money, or Value thereof from any Merchant reſiding at *Venice* aforeſaid, hath drawn any Bill of Exchange, and directed the ſame to any other Merchant reſiding at *London* aforeſaid, and thereby requeſted ſuch Merchant to whom ſuch Bill ſhould be ſo directed, at a Uſance, to pay any Sum of Money mention'd in ſuch Bill, to any other Merchant or Perſon named in ſuch Bill of Exchange, or to his Order, and to place the ſame to Account, as by Advice; and if ſuch Merchant to whom ſuch Bill hath been ſo directed, upon Sight of ſuch Bill, accepted the ſame according to the Uſage of Merchants, then ſuch Merchant ſo accepting any ſuch Bill of Exchange, became liable (at Law) by ſuch his Acceptance, to pay to ſuch Merchant, or other Perſon, or his Order, to whom Payment by the ſaid Bill was directed, ſuch Sum of Money as hath been directed to be paid in and by ſuch Bill of Exchange. And if ſuch Merchant, or other Perſon named in ſuch Bill of Exchange, to whom, or to whoſe Order, Payment hath been ſo appointed to be made, by an Indorſement upon ſuch Bill of Exchange, appointed the Sum of Money therein mentioned to be paid, to any other Merchant named in ſuch Indorſement, or to his Order, for Value mentioned to have been received, by ſuch Perſon, who had ſo made ſuch Indorſement, of ſuch Perſon or Merchant, to whom ſuch Bill of Exchange was ſo directed to be paid; then ſuch Merchant to whom ſuch Bill was ſo directed, by Virtue of his Acceptance, and ſuch Indorſement, by the ſaid Cuſtom uſed and approved of among Merchants is, and Time out of Mind hath been accuſtomed to be liable to pay to ſuch Merchant or Perſon, named in the Indorſement of ſuch Bill of Exchange, to whom, or to whoſe Order, Payment of ſuch Sum of Money mentioned in ſuch Bill of Exchange, was appointed to be made at the Time limited in ſuch accepted Bill of Exchange for the Payment of the ſame. And if ſuch Merchant, or other Perſon, to whom, or to whoſe Order, by ſuch firſt Indorſement of ſuch Bill of Exchange, the Sum therein contained

A Declaration upon a Bill of Exchange againſt the Acceptor upon a Foreign Bill of Exchange drawn at Venice, brought by C. S. the Indorſee, who had indorſed the ſame to A. C. but the ſame not being paid to the ſaid A. C. or his Factor, came back again to the Plaintiff, who paid the ſame, ſetting forth the Cuſtom. That if any Merchant reſiding at Venice, drew a Bill on a Merchant at London, the Acceptor liable.

If the ſame indorſed;

the Acceptor liable to pay to the Indorſee.

If the firſt Indorſee becomes an Indorſor.

tained was appointed to be paid, by another Indorſement of ſuch Bill of Exchange, appointed the ſame Sum of Money to be paid to ſome other Merchant, or other Perſon named in ſuch other Indorſement, or to his Order for Value mentioned in the ſame Indorſement, to have been had and received by the Merchant, who made ſuch other Indorſement; then ſuch Merchant to whom ſuch Bill had been ſo directed, by Virtue of his ſaid Acceptance, by the ſaid Cuſtom Time out of Mind uſed and approved of amongſt Merchants, is, and hath been accuſtom'd to be liable to pay to ſuch Merchant or other Perſon named in ſuch other Indorſement in ſuch Bill of Exchange, and to whom, or to whoſe Order, Payment by the ſame Indorſement was appointed to be made of ſuch Sum of Money, mention'd in ſuch Bill, at the Time limited in ſuch Bill for the Payment thereof.

Acceptor liable to pay to ſuch ſecond Indorſee.

And if ſuch Merchant, to whom ſuch Bill of Exchange had been ſo directed, and by him accepted, made Default in Payment of the Sum mention'd in ſuch Bill of Exchange, to ſuch other Merchant or Perſon, or his Order, to whom, or to whoſe Order Payment thereof was appointed to be made, by ſuch other Indorſement at the Time for that Purpoſe mentioned in ſuch Bill; then by the Cuſtom of Merchants, Time out of Mind uſed and approved of, if ſuch Merchant who made the ſaid other Indorſement, pay'd ſuch Sum to the ſaid other Merchant, or Perſon to whom Payment thereof, by ſuch other Indorſement was appointed to be made, or to his Order, or ſatisfied him for the ſame; then by the Cuſtom of Merchants, Time out of Mind uſed and approved of, the ſaid Merchant, to whom ſuch Bill ſo accepted was directed, became and ſtood liable to pay ſuch Sum of Money to the ſaid Merchant or Perſon, who by the ſaid other Indorſement made the ſaid Appointment, as if he by the ſaid other Indorſement had made no Appointment concerning the ſame.

If the ſecond Indorſor indorſes it over.

The Acceptor liable to ſuch third Indorſee, paying the Money.

And alſo whereas one *Lewis* and *John Baptiſt Morelli*, on the 30th Day of *June*, in the Year of our Lord 1684, were Merchants, reſident and uſed Commerce at the City of *Venice*, *to wit*, at *London*, in the Pariſh of St. *Mary le Bow*, in *Cheap* Ward; and the ſaid *Lewis* and *John*, then and there, according to the Uſage and Cuſtom of Merchants, Time out af Mind uſed and approved of in this Kingdom, *to wit*, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, drew their firſt Bill of Exchange, bearing Date at *Venice* aforeſaid, the ſame 30th Day of *June* 1684, New Stile, being the 22d of *June* 1684, *Engliſh* Stile, and directed the ſame Bill of Exchange to the ſaid *Thomas Death* Merchant, likewiſe dwelling, exerciſing Trade and Commerce in *London* aforeſaid, in the Pariſh and Ward aforeſaid; and by their firſt Bill of Exchange, the ſaid *Lewis* and *John* the ſame Day and Year directed the ſaid *Thomas Death* at a Uſance, *to wit*, at the End of three Months, to pay their ſaid firſt Bill of Exchange to *Chriſtopher Ebertz*, or Order, one Thouſand Ducats at fifty-one Pence three Farthings *per* Ducat Exchange with the ſame, and that he ſhould place it to Account, as by Advice; which ſaid *Chriſtopher Ebertz* was then likewiſe a Merchant, inhabiting and uſing Trade and Commerce in *London* aforeſaid, in the ſaid Pariſh and Ward, and afterwards, and before the End of three Months after the Date of the ſaid Bill of Exchange, *to wit*, on the 4th Day of *July*, in the Year of our Lord 1684. *Engliſh*

That L. and J. B. made a Bill of Exchange at Venice, payable to a Merchant at London.

That Chriſtopher Ebertz ſhew'd the Bill to T. D. who accepted it.

Stile, in *London* aforeſaid, in the Pariſh and Ward aforeſaid, the ſaid Bill of Exchange was then and there ſhewn to the ſaid *Thomas Death*; and he the ſaid *Thomas Death*, according to the ſaid Cuſtom of Merchants, then and there accepted the ſaid Bill, and ſubſcribed it with his own Hand; and afterwards, *to wit*, on the 11th Day of *Auguſt*, in the Year of our Lord, 1684, New Stile, being the firſt Day of *Auguſt* 1684, *Engliſh* Stile, the ſaid *Chriſtopher Ebertz*, for Value received of the ſaid *Cornelius Serwonters*, made his Indorſement on the aforeſaid Bill of Exchange in Writing, and ſubſcribed his own Hand thereto, bearing Date the Day and Year laſt above-mention'd, and thereby appointed the ſaid Sum mentioned in the ſaid Bill of Exchange, to be paid to the ſaid *Cornelius* or his Order; by which ſaid Acceptance and Endorſement of the aforeſaid Bill of Exchange, according to the Cuſtom of Merchants, uſed and approved of, as aforeſaid; and by Reaſon of the Premiſſes, the ſaid *Thomas Death* became liable to pay the ſaid *Cornelius* the ſaid Thouſand Ducats, at fifty-one Pence three Farthings for each Ducat, mentioned in the ſame Bill of Exchange, at the Time limited, in and by the ſame Bill of Exchange, *to wit*, at the End of three Months, after the Date of the ſaid Bill of Exchange. And afterwards, and before the Expiration of the ſaid three Months, *to wit*, on the 20th Day of *Auguſt* in the Year laſt above-mentioned, New Stile, being the 10th Day of *Auguſt* laſt, *Engliſh* Stile, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, the ſaid *Cornelius* made another Indorſement on the ſaid Bill of Exchange in Writing, and ſubſcribed his Name thereto; and thereby appointed the ſame Sum mentioned in the Bill of Exchange aforeſaid, to be paid to *Adam Conrade de Wella*, by the Name of Mr. *Adam Conrade de Wella*, or his Order, for Value received of one Juſtice *Smith*. And that afterwards, and before the Expiration of the ſaid three Months, *to wit*, on the 19th Day of *September*, in the Year of our Lord 1684, New Stile, being the 9th Day of *September* 1684, *Engliſh* Stile, the ſaid *Adam Conrade de Wella*, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, by his certain Indorſement in Writing ſubſcribed with his own Hand, appointed the ſaid Sum mentioned in the ſaid Bill of Exchange, to be paid to one *David de Barry*, for *Adam Conrade de Wella*; which ſaid *David de Barry* was Factor and Agent to the ſaid *Adam Conrade de Wella*; of which ſaid Appointments aforeſaid, by the ſaid ſeveral Indorſements aforeſaid, the ſaid *Thomas Death*, before the Expiration of the ſaid three Months, had Notice, *to wit*, at the Pariſh and Ward aforeſaid: Neverthleſs the ſaid *Thomas Death* did not pay the ſaid Sum mentioned in the aforeſaid Bill, to the aforeſaid *Adam Conrade de Wella*, nor to the ſaid *David de Barry*, at the End and Expiration of the ſaid three Months; and by Reaſon thereof afterwards, *to wit*, on the 10th Day of *October*, in the Year of our Lord 1684, Old Stile, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, the ſaid *Cornelius Serwonters* paid the ſaid *Adam Conrade de Wella*, or to his Order, the ſaid Sum contained in the ſaid Bill of Exchange, by which the ſaid *Thomas Death* became, and now is liable, by Virtue of the ſaid Cuſtom of Merchants, to pay the ſaid Sum of Money to the ſaid *C. S.* Whereupon, in Conſideration thereof, the aforeſaid *Thomas Death*, to whom the aforeſaid Bill of Exchange was directed, afterwards, *to wit*, on the 18th Day of *October*, in the Year aforeſaid, *Engliſh* Stile, at *London* aforeſaid, in the Pariſh and

That C. E. Indorſed the ſaid Bill.

That the Plaintiff aforeſaid indorſed it.

That A. C. de Wella indorſed it.

That the Acceptor did not pay it.

That the Defendant became liable to the Plaintiff.

And being ſo liable promiſed to pay, &c.

and Ward aforeſaid, undertook, and then and there promiſed to pay to the ſaid *Cornelius* the ſaid Thouſand Ducats at fifty-one Pence, and three Farthings *per* Ducat, whenever he ſhould be thereto requeſted. Nevertheleſs the ſaid *Thomas* not regarding, but totally neglecting his ſaid Promiſe and Undertaking, made in the Manner aforeſaid, hath not yet paid, but hitherto hath, and ſtill doth refuſe to pay to the ſaid *Cornelius* the ſaid Thouſand Ducats, at fifty-one Pence, and three Farthings each Ducat, amounting to 215 *l.* 12 *s.* 6 *d.* of lawful Money of *England*, or any Part thereof, altho' the aforeſaid *Thomas* afterwards, *to wit*, on the 20th Day of *October*, in the Year laſt abovementioned, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, by the ſaid *Cornelius* was thereto required; wherefore, he the ſaid *Cornelius* ſaith, that he is injured and endamaged to the Value of 400 *l.* and thereof brings his Suit, *and ſo forth.*

Two Errors were moved by the Plaintiff's Counſel in the Writ of Error.

Lutw. 888. b.

1. *That the Cuſtom was unreaſonable; for as this Cuſtom is alledged, it may be, that the Defendant will be thrice chargeable,*—— but not allowed; *for by the Indorſement by* Ebertz *to the Plaintiff, he was diſcharged from any Payment to* Ebertz: *And by the Indorſement of the Plaintiff to* Conrade, *he was diſcharged from any Payment to the Plaintiff, until the Plaintiff was afreſh entitled to receive the Money from the Defendant, by the Payment thereof to* Conrade; *ſo that at the Time of the Action brought againſt the Defendant, no Perſon was entitled to any Action againſt him but the Plaintiff.*

2. *That the Plaintiff had not aver'd in his Declaration, that the Value was received by the Drawers of the Bill; but this Exception was not allowed; for that does not lie in his Power to ſay; and it was not material to him, whether Value was paid to them or no, and therefore the Judgment was affirmed.*

Hill againſt Arias.

What Uſances are.

London (*ſſ.*) *Peter Hill* complains of *Abraham Arias*, being in the Cuſtody of the Marſhal of the *Marſhalſea*, of our Sovereign Lord the King, before the King himſelf, for that whereas two Uſances and an Half in any Bill of Exchange made at *London* aforeſaid, and directed to any Perſon in *Amſterdam*, in Parts beyond the Seas are, and for ſo long Time as there is no Remembrance of any Man to the Contrary, by the Cuſtom of Merchants, have been two Calendar Months and an Half, from the Date of ſuch Bill of Exchange: **And** whereas on the 6th Day of *April*, in the Year of our Lord 1703, at *London* aforeſaid, in the Pariſh of St. *Mary le Bow*, in *Cheap* Ward, one *Joſeph Pereira*, then and there being a Merchant, trading and uſing Commerce, according to the Cuſtom of Merchants, made his firſt Bill of Exchange, bearing Date the ſame Day and Year, and directed the ſame Bill of Exchange to one *Jacquez Henriquez* in *Amſterdam* aforeſaid, the ſame *Jacquez* being then a Merchant, and uſing Commerce at *Amſterdam* aforeſaid, and by the ſame Bill of Exchange, the ſaid *Joſeph* requeſted the ſaid *Jacquez* to pay at

That Joſeph Pereira, a Merchant, made a Bill of Exchange, directed to J. likewiſe a Merchant,

two Uſances and an Half, to the Order of the ſaid *P*——— 210 *l.* Sterling, at 34 *s.* 3 *d.* *per* Pound, Value for the ſame, and place it to Account as by Advice; (the ſaid *Peter* then likewiſe being a Merchant, trading and uſing Commerce at *London* aforeſaid, in the ſaid Pariſh and Ward) And the ſaid *Peter* in Fact ſaith, that afterwards (that is to ſay) on the 23d Day of *April*, in the ſame Year, New Stile, being the 12th Day of *April* in the ſame Year, *Engliſh* or Old Stile, the ſaid Bill of Exchange was ſhewn to the ſaid *Jacquez* at *Amſterdam* aforeſaid, and he the ſaid *Jacquez*, then and there altogether refuſed to accept the ſaid Bill of Exchange, and the ſame Bill remaineth yet unpaid; by Reaſon whereof the ſaid Bill of Exchange afterwards, (to wit) the ſaid 23d Day of *April*, in the Year aforeſaid, according to the Uſage and Cuſtom of Merchants, was for want of Acceptance thereof, in due Manner proteſted in Writing at *Amſterdam* aforeſaid, by Reaſon of which ſaid Premiſſes, the ſaid *Joſ.* became chargeable, according to the Cuſtom aforeſaid, to repay to the ſaid *Peter Hill*, the ſaid 210 *l.* immediately after Sight of the Proteſt in Writing, as aforeſaid. And the ſaid *Peter* in Fact ſaith, that the written Proteſt aforeſaid, afterwards (to wit) the 1ſt Day of *May*, in the Year laſt aboveſaid, at *London* aforeſaid, in the ſaid Pariſh and Ward, was ſhewn to the ſaid *Joſeph*; and the ſaid *Joſeph* was then and there requeſted to repay to the ſaid *Peter* the ſaid 210 *l.* which the ſaid *Joſeph* then and there refuſed to do: Of all which Premiſſes the ſaid *Abraham* afterwards, (to wit) the 18th Day of *May*, in the Year aforeſaid, at *London* aforeſaid, in the ſaid Pariſh and Ward had Notice. And thereupon the ſaid *Abraham*, in Conſideration that the ſaid *Peter*, at the ſpecial Inſtance and Requeſt of the ſaid *Abraham*, had undertook, and then and there faithfully promiſed, that he the ſaid *Peter* would deſiſt from proſecuting the ſaid *Joſeph* upon the ſaid Bill of Exchange, till after the Time of Payment of the ſaid Bill mentioned therein, the ſaid *Abraham* undertook, and to the ſaid *Peter*, then and there faithfully promiſed, that he the ſaid *Abraham* would pay to the ſaid *Peter* the ſaid Sum of 210 *l.* if the ſame ſhould not be paid in *Amſterdam* aforeſaid, at the Time by the ſaid Bill of Exchange limited for Payment thereof. And the ſaid *Peter* in Fact ſaith, that after the ſaid Time limited for Payment of the ſaid Bill of Exchange, he did deſiſt from proſecuting the ſaid *Joſeph* upon the Bill of Exchange aforeſaid; and that the ſaid 210 *l.* mentioned in the ſaid Bill of Exchange were not paid to the ſaid *Peter*, at the Time for that Purpoſe limited in the ſaid Bill of Exchange; by Reaſon of which, the ſaid Bill of Exchange afterwards, (that is to ſay) the 6th Day of *July*, in the Year of our Lord 1703, New Stile, being the 25th Day of *June* Old or *Engliſh* Stile, was, according to the Cuſtom of Merchants, duly proteſted at *Amſterdam* for want of Payment thereof. And the ſaid Bill yet remaineth unpaid, (that is to ſay) at *London* aforeſaid in the ſaid Pariſh and Ward; whereof the ſaid *Abraham*, afterwards (to wit) the 1ſt Day of *Auguſt*, in the Year laſt mentioned at *London* aforeſaid, in the ſaid Pariſh and Ward, had Notice. Nevertheleſs, the ſaid *Abraham* not regarding his Promiſe and Undertaking aforeſaid, but contriving, and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *Peter*, hath not paid to the ſaid *Peter* the ſaid Sum of 210 *l.* or any Part thereof, altho' to do the ſame,

to pay 210l. at two Uſances and Half to the Plaintiff;

That the Bill was proteſted for want of Acceptance;

whereby the Defendant became liable to pay.

And being ſo liable promiſed to pay.

That in Conſideration the Plaintiff would not ſue the Drawer, the Defendant promiſed to pay.

That he did not ſue the Drawer.

That the Bill was proteſted and unpaid.

the ſaid *Abraham* afterwards, (to wit) the 1ſt Day of *September*, in the Year laſt mentioned at *London* aforeſaid, in the ſaid Pariſh and Ward, was requeſted by the ſaid *Peter* ſo to do. And whereas alſo afterwards, on the 6th Day of *April*, in the Year aforeſaid, at *London* aforeſaid, in the ſaid Pariſh and Ward, the ſaid *Joſeph*, according to the Uſage of Merchants, made another firſt Bill of Exchange, bearing Date the ſame Day and Year laſt aboveſaid, and directed the ſaid Bill of Exchange to the ſaid *Jacquez Henriquez* in *Amſterdam* aforeſaid; and thereby the ſaid *Joſeph* requeſted the ſaid *Jacquez* at two Uſances and an Half, to pay to the Order of the ſaid *Peter* another Sum of 210 *l.* Sterling, at 34 *s.* 3 *d. per* Uſance, Value for the ſame, and to place it to Account, as by Advice. And the ſaid *Peter* in Fact ſaith, that afterwards, (that is to ſay) on the 23d Day of *April*, in the Year aforeſaid, New Stile, being the 12th Day of *April*, in the ſaid Year, *Engliſh* Stile, at *Amſterdam* aforeſaid, the ſaid Bill of Exchange laſt mentioned, was ſhewn to the ſaid *Jacquez*, and the ſaid *Jacquez* then and there refuſed to accept, or pay the ſaid laſt mentioned Bill of Exchange: And the ſame remains yet unpaid, by Reaſon whereof the ſaid laſt mention'd Bill of Exchange afterwards (that is to ſay) the ſaid 23d Day of *April*, in the Year aboveſaid at *Amſterdam* aforeſaid, according to the Uſage and Cuſtom of Merchants, was in due Manner proteſted in Writing. By Reaſon of which Premiſſes the ſaid *Joſeph* became chargeable, according to the ſaid Cuſtom, to repay to the ſaid *Peter*, the ſaid 210 *l.* laſt mentioned, immediately upon Sight of the before written Bill ſo proteſted. Of all which Premiſſes the ſaid *Abraham* then and there had Notice; and thereupon the ſaid *Abraham*, on the ſaid 18th Day of *May*, in the ſaid Year at *London* aforeſaid, in the ſaid Pariſh and Ward, by a written Subſcription with his own Hand, under the ſaid written Proteſt, promiſed to pay the full Contents of the ſaid Bill ſo proteſted, if it ſhould not be paid in due Time at *Amſterdam*. And by Reaſon thereof, the ſaid *Abraham*, according to the Uſage of Merchants aforeſaid, became liable to pay the ſaid 210 *l.* laſt mention'd, to the ſaid *Peter*, if they ſhould not be paid in due Time at *Amſterdam*. And thereupon the ſaid *Abraham*, in Conſideration of the Premiſſes, the ſame Day and Year laſt above mentioned, at *London* aforeſaid, in the ſaid Pariſh and Ward, undertook, and then and there faithfully promiſed, that he the ſaid *Abraham*, the ſaid 210 *l.* laſt mentioned, would well and truly content and pay the ſaid *Peter*, whenever after he ſhould be thereto required, if the ſame ſhould not be paid in due Time at *Amſterdam* aforeſaid. And the ſaid *Peter* in Fact ſaith, that the ſaid 210 *l.* laſt mentioned, were not paid in due Time at *Amſterdam* aforeſaid, according to the Form and Effect of the laſt mentioned Bill of Exchange; by Reaſon of which, the ſaid laſt mentioned Bill of Exchange afterwards, (to wit) the 6th Day of *July*, in the Year aboveſaid, New Stile, being the 25th Day of *June*, in the ſame Year *Engliſh* Stile, was in due Manner proteſted, according to the Uſage of Merchants at *Amſterdam* aforeſaid, for want of Payment thereof and the ſame remains unpaid, (to wit) at *Londom* aforeſaid, in the ſaid Pariſh and Ward; whereof the ſaid *Abraham*, afterwards (to wit) the 1ſt Day of *October*, at *London* aforeſaid, in the ſaid Pariſh and Ward, had Notice; nevertheleſs the ſaid *Abraham*,

That Joſ. drew another Bill to Jac. Henriques payable at two Uſances and an Half, to the Order of the Plaintiff.

That J. H. refuſed Acceptance.

The Drawer became liable.

That the Defendant ſubſcribed to pay for the Honour of the Drawer.

And thereby became liable.

And being ſo liable, promiſed to pay, &c.

That the Money was not paid.

And that the Bill was proteſted.

ham, not regarding his Promiſe and Undertaking made in Form aforeſaid, but craftily and ſubtilly intending to deceive and defraud the ſaid *Peter* in that Behalf, the ſaid *Peter* hath not paid the ſaid ſeveral Sums of Money, or any Part thereof, or in any Manner howſoever ſatisfied him for the ſame, altho often afterwards, (that is to ſay) on the 10th Day of *October* in the Year laſt mentioned at *London* aforeſaid, in the ſaid Pariſh and Ward, was requeſted by the ſaid *Peter* ſo to do; wherefore the ſaid *Peter* ſaith, that he is injured and endamaged to the Value of 600 *l.* and therefore brings this Suit, *and ſo forth.*

John Thorpe againſt **Richard Thorpe.**

Hillary, the Eighth of King *William* the Third. *Roll* 1667.

Declaration upon mutual Promiſes upon an Agreement, by which the Plaintiff agrees to releaſe to the Defendant his Equity of Redemption in two Cloſes, in Conſideration of which the Defendant undertook to pay to the Plaintiff 7 l. Lut. 245.

Yorkſhire. Richard Thorpe late of *Hopton*, in the ſaid County Gent. was attached to anſwer *John Thorpe* in a Plea of Treſpaſs upon the Caſe; whereupon the ſaid *John*, by *H. H.* his Attorney complains, that whereas the ſaid *Richard* on the 19th Day of *January*, in the Year of our Lord 1693, had and held, of and from the ſaid *John*, two Cloſes of Cuſtomary Land called *Boolfalls*, with the Appurtenances in *Hipperholme* in the ſaid County, by way of Mortgage; and afterwards (that is to ſay) the ſame Day and Year at the Caſtle of *York* there was a certain Diſcourſe had between the ſaid *R.* and the ſaid *J.* of and concerning the ſaid Mortgage, and releaſing the Equity of Redemption of the ſaid *John*, of and in the ſaid Tennements, with the Appurtenances. And alſo of and concerning ſeveral Sums of Money then due and payable from the ſaid *John* to the ſaid *Richard*; and upon that Diſcourſe the ſaid *John* then and there agreed to make a good and ſufficient Releaſe of his Equity of Redemption, of and in the Tenements aforeſaid, with the Appurtenances to and for the Uſe of the ſaid *Richard*, and for his ſole Benefit; in Conſideration of which, the ſaid *Richard*, then and there agreed to give and pay to the ſaid *John* 7 *l.* over and beſides the Money which was then due to the ſaid *Richard*, for and upon the ſaid Mortgage, and to deliver to the ſaid *John* one Sack of Malt, and alſo to acquit him of and from all Monies, which the ſaid *John* then owed to the ſaid *Richard*, as above. And the ſaid *Richard* afterwards, (that is to ſay) the ſame Day and Year, at the Caſtle of *York* aforeſaid, in Conſideration of the ſaid Agreement, and alſo in Conſideration, that the ſaid *John* had then and there undertook, and faithfully promiſed to the ſaid *Richard*, to perform every Thing in the ſaid Agreement, on the Part of him the ſaid *John* to be peformed; he the ſaid *Richard* undertook, and then and there faithfully promiſed the ſaid *John*, that he the ſaid *Richard* would well and truly perform every Thing on his Part to be performed. And the ſaid *John* in Fact ſaith, that after the Making the ſaid Agreement, and before the Iſſuing out of the original Writ of the ſaid *John*, (to wit) on the 29th Day of *July*, in the Year of our Lord 1694, he the ſaid *John* performed every Thing in the Agreement on his Part to be performed, (that is to ſay) at the Caſtle of *York* aforeſaid. And altho' the ſaid *Richard* in Purſuance of the ſaid Agreement, gave and paid to the ſaid *John*

General Averment of all to be performed on the Part of the Plaintiff.

John 25 *s.* Parcel of the ſaid 7 *l.* Nevertheleſs the ſaid *Richard* not regarding his ſaid Promiſe and Undertaking made in Form aforeſaid, as to the 5 *l.* 15 *s.* Reſidue of the ſaid 7 *l.* but contriving and fraudulently intending craftily and ſubtilly to defraud and deceive the ſaid *John* in this Particular, hath not given or paid to the ſaid *John* the ſaid 5 *l.* 15 *s.* or any Part thereof, nor hath delivered to the ſaid *John* the ſaid Sack of Malt, nor hath acquitted the ſaid *John* of the ſaid Money, due to the ſaid *Richard*, as above, according to the Intent and Purpoſe of the ſaid Agreement. Altho' the ſaid *Richard* afterwards, (that is to ſay) on the 10th Day of *Auguſt*, in the Year laſt above mentioned, and often afterwards at the Caſtle of *York* aforeſaid, was by the ſaid *John* thereto required, but altogether hitherto hath, and ſtill doth yet refuſe ſo to do. **And** whereas the ſaid *Richard* afterwards (that is to ſay) on the 29th Day of *January*, in the ſaid Year of our Lord, at the Caſtle of *York* aforeſaid, was indebted to the ſaid *John* in 5 *l.* 15 *s.* of lawful Money of *England*, for releaſing the Equity of Redemption of the ſaid *John*, of and in certain Cuſtomary Lands, with the Appurtenances in *H*---- in the County aforeſaid, heretofore granted and paſs'd to the ſaid *Richard*, and to his Uſe and Benefit, at his ſpecial Inſtance and Requeſt, and being ſo indebted, the ſaid *Richard* afterwards, (that is to ſay) the Day and Year laſt aboveſaid, at the Caſtle of *York* aforeſaid, in Conſideration thereof undertook, and then and there faithfully promiſed to the ſaid *John*, that he the ſaid *Richard* would well and truly content and pay to the ſaid *John*, the ſaid 5 *l.* 15 *s.* laſt mentioned, whenever he ſhould be thereto required: Nevertheleſs the ſaid *Richard*, not regarding his Promiſe and Undertaking laſt mentioned, but contriving, and fraudulently intending, craftily and ſubtilly to defraud and deceive the ſaid *John* in this Particular, hath not given or paid to the ſaid *John* the ſaid 5 *l.* 15 *s.* or any Part thereof; altho' the ſaid *Richard*, afterwards (that is to ſay) on the 10th Day of *Auguſt*, in the Year laſt above mentioned, and often afterwards at the Caſtle of *York* aforeſaid, was by the ſaid *John* requeſted thereto, but hitherto altogether hath, and ſtill doth refuſe ſo to do, to the Damage of the ſaid *John* 20 *l.* and therefore he brings this Suit, *and ſo forth.*

Declaration upon an Indebitat' Aſſumpſit for 5 l. 15 s. for a Releaſe of the Equity of Redemption.

Bar.

By the ſame Releaſe by which the Plaintiff releaſed all his Equity of Redemption.

And the ſaid *Richard* by *Joſ. Green* his Attorney, comes and defends the Force and Injury when, *and ſo forth.* And as to the firſt Promiſe aforeſaid, the ſaid *R.* ſaith, that the ſaid *J. T.* ought not to have his Action againſt him, becauſe he ſaith, that after the Making of that Promiſe, (that is to ſay) on the 29th Day of *July*, in the Year of our Lord 1694, at the Caſtle of *York* aforeſaid, by a certain Indenture then and there made between the ſaid *R. T.* and one *T. H.* by the Name of *R. T.* of, *&c.* and *T. H.* of, *&c.* of the one Part, and the ſaid *J.* by the Name of *J. T. &c.* of the other Part, which other Part ſeal'd with the Seal of the ſaid *John* the ſaid *T. R.* brings here into Court, bearing Date the Day and Year laſt mentioned, the ſaid *John* remiſed, releaſed, and for ever quit-claimed to the ſaid *R. T.* and *T. H.* their Executors, Adminiſtrators, and Aſſigns, all, and all manner of Actions, Suits, Cauſes and Accounts, Debts, Duties, Reckonings, Sum and Sums of Money and Demands whatſoever, which he the ſaid *J. T.* ever had, or which his Heirs, Executors, Adminiſtrators and Aſſigns, or any of them, then, or at any Time then to come, thereafter ſhould or might have, to, by or againſt the ſaid *R. T.* and

T. H. their Executors, Adminiſtrators or Aſſigns, for, or by reaſon of any Matter, Cauſe, or Thing whatſoever, as by the ſaid Indenture more fully may appear; and this he is ready to verify; wherefore he prayeth Judgment, if the ſaid *J. T.* ought to have his Action againſt him, *and ſo forth.* And as to the ſecond Promiſe aforeſaid, in the ſaid Declaration above mentioned, the ſaid *R.* ſaith, that the ſaid *J. T.* ought not to have his Action againſt him thereof, becauſe he ſaith, that the ſaid Promiſe was made before the ſaid 29th Day of *July*, in the Year of our Lord 1694 aforeſaid, (to wit) on the 1ſt Day of *July* in the ſame Year, at the Caſtle of *York* aforeſaid. And the ſaid *R.* further ſaith, that on the ſaid 29th Day of *July*, in ſaid Year of our Lord 1694, at the Caſtle of *York* aforeſaid, by the ſaid Indenture, then and there made between the ſaid *R. T.* and the aforeſaid *T. H.* by the Name of *R. T.* of, *&c.* and *T. H.* of, *&c.* of the one Part, and the ſaid *J. T.* of, *&c.* of the other Part, which other Part ſealed with the Seal of the ſaid *John*, he bringeth here into Court, bearing Date the Day and Year laſt above ſaid, the ſaid *John* Remiſed, releaſed, and for ever quit-claimed, to the ſaid *R. T.* and *T. H.* their Executors, Adminiſtrators and Aſſigns, all and all manner of Actions, Suits, Cauſes and Accounts, Debts, Duties, Reckoning, Sum and Sums of Money and Demands whatſoever, which he the ſaid *J. T.* ever had, or which his Heirs, Executors, Adminiſtrators and Aſſigns, or any of them, then or at any Time to come thereafter, ſhould, or might have, to, by or againſt the ſaid *R. T.* and *T. H.* their Executors, Adminiſtrators and Aſſigns, for, or by Reaſon of any Matter, Cauſe, or Thing whatſoever, as by the ſaid Indenture more fully may appear; **without that**, that after the making the ſaid Indenture, he the ſaid *R.* undertook, as by the ſaid Promiſe above is ſuppoſed. And this he is ready to verify, and therefore prayeth Judgment, if the ſaid *J. T.* ought to have his Action againſt him, *and ſo forth.*

Judgment was given in the Common Pleas for the Plaintiff; and upon a Writ of Error in the King's Bench it was objected, that by the Releaſe this Action was gone. But the Opinion of the Court delivered by my Lord Ch. Juſtice Holt *was, That the Releaſe of the Equity of Redemption was the Ground of the Plaintiff's Action: And therefore as a Releaſe of all Demands, doth not releaſe a Covenant not broken, ſo neither doth this Releaſe releaſe this Cauſe of Action ſubſequent to the Releaſe, and which ariſeth from the Releaſe it ſelf. And tho' it was urged that theſe were mutual Promiſes, and therefore the Plaintiff might have an Action before the making the Releaſe; and that in this Caſe there need not be an Allegation of the Performance of the Part of the Plaintiff, yet the Opinion of the Court in this Caſe was otherwiſe; and that this Agreement that the Plaintiff ſhould releaſe the Equity of Redemption; was the Conſideration for which the Defendant was to pay* 7 l. *that the making of the Releaſe in this Caſe, is a Condition precedent to the Payment of the Money, and differs from the Caſe of* Nichols *and* Rainbred, *in* Hob. 88. *where in Conſideration that* Nichols *promiſed to deliver to the Defendant a Cow, the Defendant promiſed to deliver to him* 50 s. *there it was adjudged that the Plaintiff need not aver the Delivery of the Cow, becauſe it was a Promiſe upon a Promiſe; and ſo another Difference was taken to prove the Judgment of the Court.* 15 H. 7. 10. B. A. *Covenants to ſerve me one Year, and I Covenant to give* *him* 20l. *he may ſue me for the* 20l. *tho' he never ſerve me a Day; but otherwiſe ſhall it be if the Agreement be that he ſhall have* 20l. *for ſerving me a Year. And another Difference was taken, That if by Agreement a Day certain be appointed for Payment of Money, and that Day is to happen before the Act can be perform'd, for which the Money is to be paid; there altho' the Words are, that one ſhall pay ſo much for the Performance of ſuch an Act by another, yet the Party may have an Action for the Money after the Day appointed for the Payment of it, and before the Act be perform'd for which it was to be paid.* 7 Cook 10. b. *Another Difference was taken, that if a certain Day be appointed by Agreement for the Payment of Money, yet if that Day happen after the Conſideration be perform'd, there it ought to be averr'd, that the Action was perform'd.* Dyer 76. *If a Contract be made between Two that for a Horſe of the one to be deliver'd at ſuch a Day, the other ſhall have his Horſe at* Chriſtmaſs, *if the Firſt be not deliver'd at that Day, the other ſhall never have an Action for the Horſe at* Chriſtmaſs.

Lut. 251.

Caſe for the Tenant of a Copyholder againſt another for digging of Turf upon the Common of the Copyholder, by reaſon whereof the Tenant could not enjoy the Common for his Cattle as freely as before.

Devon (to wit): *A. B.* complains of *C. D.* the younger, in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, before the King himſelf, for that whereas our ſaid Sovereign Lord the King that now is, had been ſeized in his Demeſne as of Fee, in Right of his Crown of *England*, of the Manor of *G.* with the Appurtenances, in the Pariſh of *H.* in the County aforeſaid, whereof One Meſſuage, One Garden, One Orchard, Fifty Acres of Land, Ten Acres of Meadow, Ten Acres of Paſture, and Twenty Acres of Furze and Heath, with the Appurtenances in *D.* in the ſaid Pariſh of *H.* are, and from the Time whereof the Memory of Man is not to the contrary, were Parcel: And whereas alſo the Tenements aforeſaid, with the Appurtenances, are, and during all the Time aforeſaid have been Cuſtomary Tenements of the ſaid Manor, and demiſed and demiſable by Copy of Court-Rolls of the ſaid Manor, or by the Steward of the Court of the ſaid Manor, to any Perſon or Perſons whatſoever, willing to take the ſame to themſelves, and their Heirs, at the Will of the Lord or Lady, according to the Cuſtom of the Manor aforeſaid. And our ſaid Sovereign Lord the King being ſo ſeized of the ſaid Manor, with the Appurtenances, whereof the Tenements above are Parcel, our ſaid Sovereign Lord the King, that now is, at the Court of his ſaid Manor, holden at the ſaid Manor (*ſuch a Day and Year*) by one *E. P.* Eſq; then his Steward of the Court of the ſaid Manor, by Copy of Court-Rolls of the ſame Manor, granted the Tenements aforeſaid, with the Appurtenances, by the Names of one Meſſuage or Tenement, (*ſo mention the Parcels as in the Grant*) to one *J. S.* Gent. to have and to hold the ſame, to the ſaid *J. S.* and his Heirs, at the Will of the Lord, according to the Cuſtom of the ſaid Manor; by Virtue of which Grant, the ſaid *J. S.* enter'd into the ſaid Tenements, with the Appurtenances, and was, and ſtill is thereof ſeiſed in his Demeſne, as of Fee, at the Will of the Lord, according to the Cuſtom of the ſaid Manor. And whereas alſo, within the ſaid Manor, there is, and Time out of Mind hath been ſuch a Cuſtom, That every cuſtomary Tenant of the ſaid Manor, having, or holding any cuſtomary Tenements of cuſtomary Tenure, Parcel of that Manor, to him and his Heirs, at the Will of the Lord, according to the Cuſtom of the ſaid Manor, during the Time aforeſaid, might, and have been accuſtom'd to demiſe by his Indenture, at his Pleaſure, his cuſtomary Tenements of the ſame Manor, or any Parcel thereof, to any Perſon, willing to take the ſame for the Term of One and Twenty whole Years, from the making of ſuch Demiſe, or for a leſſer Term of Years, at the Will and Pleaſure of ſuch cuſtomary Tenants. And whereas alſo, within the ſaid Manor, there is, and during the Time aforeſaid hath been another Cuſtom, That the cuſtomary Tenants of the ſaid Tenements aforeſaid, whereof the ſaid *J. S.* is ſeized in Form aforeſaid, to him and his Heirs, according to the Cuſtom of the ſaid Manor, have had, and have been accuſtom'd to have for themſelves, their Farmers and Tenants, for Terms of Years, according to the Cuſtom of the ſaid Manor, Common of Paſture in a certain Place, in the ſaid Pariſh of *H.* Parcel of the ſaid Manor, call'd *Primroſe Down* for all and all manner of their commonable Cattle levant and couchant upon the ſaid Tenements, with the Appurtenances, every Year at all Times of the Year, as appertaining only to the ſaid Tenements, with the Appurtenances. And the ſaid *J. S.* being ſo ſeized of the ſaid cuſtomary Tenements, with the Appurtenances in Form aforeſaid, after the ſaid Grant thereof made to him in Form aforeſaid, that is to ſay, *ſuch a Day and Year*, at *H.* aforeſaid, by his certain Indenture made between the ſaid *J. S.* of the one Part, and him the ſaid *A.* of the other Part (the other Part whereof, ſealed with the Seal of the ſaid *J. S.* the ſaid *A.* brings here into Court, the Date whereof is the ſame Day and Year) demiſed to the ſaid *A.* the ſaid Tenements, with the Appurtenances (except as afterwards in the ſame Indenture is excepted) by the Name of all that Meſſuage or Tenement, *&c.* (except and always reſerved out of the ſaid Demiſe and Grant to the ſaid *J. S.* his Heirs and Aſſigns, all and all manner of Timber-Trees, *and whatever elſe is excepted in the Deed*) to have and to occupy the ſaid Tenements, and other the Premiſſes, with the Appurtenances (except before excepted) to the ſaid *A.* and his Aſſigns, from the Feaſt of the Annunciation of the Bleſſed Virgin *Mary* laſt paſt, before the Date of the ſaid Indenture, for and during the Term of Five Years from thence next enſuing, and fully to be compleat and ended, as by the ſaid Indenture amongſt other Things it may more fully appear: By Virtue of which Demiſe, the ſaid *A.* enter'd into the ſaid Tenements, with the Appurtenances (except before excepted) and was, and ſtill is thereof poſſeſs'd (except before excepted); and by Virtue of the ſaid Demiſe, he ought to have and enjoy his ſaid Common of Paſture, for all his ſaid commonable Cattle in and upon the ſaid Places call'd *Primroſe Down.* Nevertheleſs, the ſaid *C. D.* not being ignorant of the Premiſſes, but endeavouring and intending unjuſtly to hinder and deprive the ſaid *A.* of his ſaid Common of Paſture, to be had in the aforeſaid Place call'd *Primroſe Down*, (*ſuch a Day and Year*), and divers Days and Times, as well before the ſaid (*ſuch a Day*) as afterwards, dug Turfs, that is to ſay, Ten Thouſand Horſe-Loads of Turfs in the ſaid Place call'd *D.* and by the digging of the ſame Turfs, and the laying and ſpreading of the ſame in ſeveral Places in and upon the ſaid Place call'd *D.* trod down, conſum'd and ſpoil'd the Graſs there growing, whereby the ſaid *A.* could not have his ſaid Common of Paſture for his ſaid

Cattle levant and couchant upon the ſaid Tenements, with the Appurtenances, in the ſaid Place call'd *D.* in ſuch an ample and beneficial Manner as he formerly had, and of Right ought, and was accuſtomed to have, to the Damage of the ſaid *A.* of Forty Pounds, and whereupon he brings this Suit, *and ſo forth.*

Oſborne againſt **Rogers**, Executor of *Weſton.*

Eaſter, 21 *Charles* the Second. *Roll* 109.

Declaration againſt an Executor that in Conſideration that the Plt. had ſerved the Teſtator, that the Teſtator undertook to provide for the Plaintiff in a plentiful Manner, and uſe him as his own Son.

1 Sand. 264.

And then the Plaintiff aſſigns a Breach that he had not received any Recompence of his Service, except the Sum of 20 l. which was not ſufficient.

London. Be it remember'd, *and ſo forth.* [*here comes the Remainder of the* Memorandum.] *Robert Oſborn*, Gent. complains of *George Rogers*, Doctor of Phyſick, Executor of the laſt Will and Teſtament of *W. Weſton*, Gent. deceas'd, in Cuſtody of the Marſhal of the *Marſhalſey*, of our Sovereign Lord the King, being before the King himſelf, for that, whereas the ſaid *Robert* had ſerv'd one *John Weaver*, Gent. for the Space of three Years, next before the 21ſt Day of *March* 1647, and had acquired in ſuch Service the Sum of 60 *l.* yearly; and the aforeſaid *Robert Oſborne* ſo being in the Service of the ſaid *John Weaver* afterwards, (that is to ſay) the ſaid 21ſt Day of *March*, in the ſaid Year at *London* aforeſaid, (that is to ſay) in the Pariſh of St. *Dunſton's* in the Weſt, in the Ward of *Farringdon* without, a certain Diſcourſe was had and aroſe between the ſaid *William* in his Life-time, and one *Hellen Oſborne*, Mother of the ſaid *Robert*, of and concerning the ſaid *Robert*, and of and concerning the ſaid *William's* taking the ſaid *Robert* into his Service. Whereupon the ſaid *William* in his Life-time, afterwards, (that is to ſay) the ſame Day and Year at *London* aforeſaid, in the ſaid Pariſh and Ward, in Conſideration that the ſaid *Robert*, at the ſpecial Inſtance and Requeſt of the ſaid *William*, would ſerve the ſaid *William*, and imploy his Care and Induſtry, in and about the Affairs of the ſaid *William*, he the ſaid *William* undertook, and then and there faithfully promiſed the ſaid *Robert*, that he the ſaid *William* would receive the ſaid *Robert* into his Service, and eſteem him as his own Son, and plentifully provide for the ſaid *Robert*. And the ſaid *Robert* in Fact ſays, that truſting to the Promiſes and Undertakings of the ſaid *William*, made in the Manner as above ſet forth, afterwards, (that is to ſay) the Day and Year aboveſaid at *London* aforeſaid, in the ſaid Pariſh and Ward, he the ſaid *Robert* came into the Service of the ſaid *William*, and ſerved him from thence till the firſt Day of *November*, in the 16th Year of the Reign of our Sovereign Lord *Charles* the Second, now King of *England*, *Scotland*, *France* and *Ireland*, Defender of the Faith, *and ſo forth*, at *London* aforeſaid, in the ſaid Pariſh and Ward; and during all that Time, employed his Care and Induſtry, in and about the Affairs of the ſaid *William*, with all poſſible Diligence, without any Wages, or Salary given the ſaid *Robert*, by the ſaid *William* for the ſame; And that the ſaid *William* afterwards, (that is to ſay) on the 9th Day of *December*, in the eighteenth Year of the Reign of his ſaid preſent Majeſty, the ſaid *William* died inteſtate at *London* aforeſaid, in the ſaid Pariſh and Ward, poſſeſſed of a Real and Perſonal Eſtate, together amounting to the Value of 3000 *l.* and upwards, and had no Children of his own. Nevertheleſs the ſaid *William*, at the Time of his Death, or at any Time in his Life, after the making the ſaid Promiſe and Undertaking, did not plentifully provide for the ſaid *Robert*,

Robert, nor gave him any Recompence for his ſaid Service, except the Sum of twenty Pounds, which was not a ſufficient Recompence for his ſaid Service, altho' the ſaid *William* in his Life-time, and the ſaid *George* after his Deceaſe, (that is to ſay) on the firſt Day of *January*, in the 20th Year of the Reign of his ſaid preſent Majeſty at *London* aforeſaid, in the ſaid Pariſh and Ward, was often requeſted ſo to do by the ſaid *Robert*. Whereby the ſaid *Robert* ſaith he is injured and endamaged to the Value of 1000 *l.* and therefore he brings this Suit, *and ſo forth*.

And now at this Day, (that is to ſay) on *Wedneſday* next after fifteen Days of *Eaſter* this ſame Term, (until which Day the ſaid *George* had Leave to imparle to the ſaid Bill, and then to anſwer, *and ſo forth*,) comes before our ſaid Sovereign Lord the King at *Weſtminſter*, as well the ſaid *Robert* by his ſaid Attorney, as the ſaid *Geo.* by *A. Wellby* his Attorney. And the ſaid *Geo.* defends the Force and Injury, and the Damages, and whatever elſe he ought to defend, when and where this Court ſhall pleaſe to take the ſame into Conſideration; and ſaith, That the ſaid *Robert* ought not to have, or maintain his ſaid Action thereof againſt him, becauſe he ſaith, that right and true it is, that the ſaid *Robert* came into the Service of the ſaid *William*, on the ſaid 21ſt Day of *March*, in the ſaid Year of our Lord 1647, and continued in ſuch Service, till the laſt Day of *December* 1658, during which ſaid Time, he the ſaid *William* provided plentifully for the ſaid *Robert*, with Meat, and Drink at *London* aforeſaid, in the ſaid Pariſh and Ward; and alſo paid to the ſaid *Robert*, the Sum of eight Pounds of lawful Money of *England* yearly for his Salary. And the ſaid *Geo.* further ſaith, That the ſaid *Robert*, on the ſaid laſt Day of *December*, in the ſaid Year of our Lord 1658, *at London* aforeſaid, in the ſaid Pariſh and Ward, voluntary left the Service of the ſaid *William*; **Without that**, that the ſaid *Robert* ſerved the ſaid *William* till the firſt Day of *November*, in the 16th Year of the Reign of his preſent Majeſty, as in the Declaration of the ſaid *Robert* above is mentioned. And this he is ready to verify; wherefore he prays Judgment, if the ſaid *Robert* ought to have or maintain his ſaid Action thereof againſt him, *and ſo forth*.

Plea, that True it is that the Plt. came into the Service of the Teſtator the 6th of March 1647, and there continued till the laſt Day of December 1658, and that the Teſtator did plentifully provide for the ſaid Plt. and paid him 8 l. yearly for his Salary, and traverſes, that the Plt. continued to ſerve the Teſtator till the 1ſt of November, in the 16th Year of the King's Reign.

And the ſaid *Robert* ſaith, That for any Thing alledged by the ſaid *Geo.* above in his Plea, he the ſaid *Robert* ought not to be precluded from having his Action againſt the ſaid *Geo.* Becauſe he ſaith, That the ſaid Plea above pleaded by the ſaid *Geo.* in Manner and Form aforeſaid, and the Matters therein contained, are not ſufficient in Law to preclude the ſaid *Robert* from having his ſaid Action againſt him, or is the ſaid *Robert* under any Neceſſity, or bound by the Laws of this Kingdom, to make any Anſwer thereto; and this he is ready to verify. Wherefore for want of a ſufficient Plea in this Particular, the ſaid *Robert* prays Judgment, and his Damages to be awarded to him by reaſon of the Premiſſes, *and ſo forth*. And for Cauſes of Demurrer in Law on the ſaid Plea, he the ſaid *Robert*, according to the Form of the Statute in ſuch Caſe made and provided, doth here demonſtrate, and ſhew to the Court theſe Cauſes following, (that is to ſay)

Demurrer.

ſay) for that the ſaid *Geo.* hath in this Caſe traverſed a Matter not traverſable, and that the ſaid Plea is deficient in Form, *and ſo forth.*

Joinder in Demurrer.

And the ſaid *Geo.* ſaith, That the ſaid Plea above pleaded by the ſaid *Geo.* in Manner and Form aforeſaid, and the Matters therein contain'd, are good and ſufficient in Law to preclude the ſaid *Robert* from having his ſaid Action againſt the ſaid *Geo.* which ſaid Plea, and Matters therein contained, he the ſaid *Geo.* is ready to verify and prove, as this Court ſhall pleaſe to direct. And becauſe the ſaid *Robert* hath made no Anſwer to the ſaid Plea, nor hitherto any wiſe denied the ſame, he the ſaid *Geo.* as above prays Judgment, and that the ſaid *Robert* may be precluded from having his ſaid Action againſt him, *and ſo forth.* But becauſe the Court of our Sovereign Lord the King, now here, are not adviſed of giving their Judgment of and upon the Premiſſes, a Day therefore is given to the ſaid Parties, until *Friday* next after the Morrow of the Holy Trinity for hearing their Judgment. Becauſe the Court of our ſaid Sovereign Lord the King are not yet adviſed thereof, *and ſo forth*; at which Day the ſaid Parties by their ſaid Attornies come before our Sovereign Lord the King at *Weſtminſter.* Whereupon all and ſingular the Premiſſes being viewed, diligently inſpected, and fully underſtood, with mature Deliberation had thereon, by the Court of our ſaid Sovereign Lord the King, here, in as much as it ſeems to the ſaid Court, that the ſaid Plea above pleaded in Manner and Form aforeſaid, and the Matters therein contained, are not ſufficient in Law to preclude the ſaid *Robert* from having his ſaid Action againſt the ſaid *Geo.* It is therefore conſidered, that the ſaid *Robert* ought to recover his Damages againſt the ſaid *Geo.* by Reaſon of the Premiſſes. But becauſe his ſaid Preſent Majeſty's Court here, know not what Damages the ſaid *Robert* hath ſuſtained, by reaſon of the Premiſſes, the Sheriff is therefore commanded, that by the Oaths of Twelve honeſt, and lawful Men of his Baliwick, he diligently enquire what Damages the ſaid *Robert* hath ſuſtained, as well by Occaſion of the Premiſſes, as for his Expences and Coſts laid out by him, about his Suit in this Cauſe. And the Inquiſition which he ſhould take, he ſhould return to our Sovereign Lord the King at *Weſtminſter*, on *Friday* next after three Weeks of the *Holy Trinity*, under his Seal, and the Seals of thoſe by whoſe Oaths he ſhou'd make ſuch Inquiſition, together with his ſaid Majeſty's Writ directed to him for that Purpoſe. The ſame Day is given to the ſaid *Robert* there, *and ſo forth.*

Continuance.

Judgment.

The Award of the Inquiry,

An Exception was taken to this Plea by the Counſel for the Plaintiff, that the Defendant by his Plea with the Traverſe, hath put but Part of the Time of the Service in Iſſue, (that is to ſay) whether the Plaintiff ſerv'd for any longer Time than the laſt Day of *December* 1658; ſo that all the Time before, for which the Plaintiff ought to have had Recompence, the Defendant hath tender'd no Iſſue; and altho' the Defendant hath alledged, that for that Time the Plaintiff had a Recompence, yet that ought not to conclude the Plaintiff, but that he might be let in to ſay, that he had not any ſuch Recompence, or that the Recompence ſuppoſed by the Defendant to have been given him was too ſmall. But here the Defendant by his Traverſe hath totally excluded the Plaintiff from taking any ſuch Iſſue; therefore it is an ill Plea.

So in an Action upon the Caſe for ſtopping up Three Lights, the Defendant juſtifies the ſtopping up of Two, and traverſes the ſtopping up of Three. That is an ill Plea, becauſe the Inducement goes but to Part, (that is to ſay) Two of the Lights; and yet the Traverſe goes preciſely to all the Three; which ought not ſo to be; becauſe if the Defendant had ſtopp'd Two only, and not Three, yet the Plaintiff, in an Action upon the Caſe, ought to recover Damages for ſo many as he did ſtop up; therefore the Defendant ought to have pleaded as to ſtopping up one of the Lights he was not guilty; and as to the other Two, he ought to have juſtify'd.

1 Saund. 22. 3 Lev. 227. Cro. Eliz. 99. 667. Cro. Car. 278. Lut. 299, 468, 469. 2 Saund. 207, 239. 1 Lev. 98. 10 Co. 116.

Michaelmas, the Eighth of King *George*.

London (to wit): *William Rhodes* of *London*, Gentleman, was attached to anſwer to *Nathan Jacobs* of a Plea of Treſpaſs upon the Caſe; and whereupon the ſaid *Nathan*, by *Gravely Norton*, his Attorney, complains, that whereas the Twenty-Sixth Day of *Auguſt*, in the Year of our Lord One Thouſand Seven Hundred and Twenty, at *London* aforeſaid, in the Pariſh of St. *Michael-Cornhill*, in the Ward of *Cornhill*, it was agreed between the ſaid *William* and *Nathan*, That the ſaid *Nathan* ſhould transfer, or cauſe to be transferr'd to the ſaid *William* One Thouſand Pounds Credit in the Stock of a certain Company, commonly call'd the *London Aſſurance*, at and upon the then next opening of the Books for transferring the Stock, and ſhould pay to the ſaid *Nathan*, at and according to the Rate of Ninety-Five Pounds of lawful Money of *Great Britain*, for every Hundred Pounds of the ſaid One Thouſand Pounds Credit in the Stock aforeſaid, in the whole amounting to Nine Hundred and Fifty Pounds. And thereupon the ſaid *William* afterwards, (to wit) upon the ſaid Twenty-Sixth Day of *Auguſt*, in the Year aforeſaid, in *London* aforeſaid, in the ſaid Pariſh and Ward, in Conſideration that the ſaid *Nathan* then and there, at the ſpecial Inſtance and Requeſt of the ſaid *William*, undertook, and then and there faithfully promiſed the ſaid *William*, that he the ſaid *Nathan* would well and truly perform, and faithfully fulfill all and ſingular the Matters and Things contain'd in the ſaid Agreement on his Part, to be perform'd and fulfill'd, the ſaid *William* then and there undertook, and to the ſaid *Nathan* faithfully promiſed, that he the ſaid *William* would well and truly perform and faithfully fulfill all and ſingular the Matters and Things contain'd in the ſaid Agreement, on the Part of the ſaid *William* to be perform'd and fulfill'd. And the ſaid *Nathan* ſaith, That the Firſt Day of opening the ſaid Books for transferring the ſaid Stock, after the ſaid Agreement made as above, was the Fifth Day of *September*, in the Year of our Lord aforeſaid; and that at that Time, and long before, and always afterwards hitherto, the only Place for transferring the aforeſaid Stock, hath been and now is at a certain Houſe, commonly call'd the *London Aſſurance-Office*, ſituate in the Pariſh and Ward aforeſaid, whereof the ſaid *William* then and there had Notice; and that the only Hours for transferring of Stock on the ſaid Fifth Day of *September*, in the Year aforeſaid, and long before, and

Upon an Agreement to transfer London Aſſurance Stock.

That it was agreed, that the Plaintiff ſhould transfer the next opening, at ſuch a Price.

That in Conſideration the Plaintiff would perform the Agreement on his Part, the Defendant was to perform it on his Part.

An Averment of the Time for transferring.

The proper Hours for transferring.

and always afterwards hitherto have been, and now are, between the Hour of nine in the Forenoon, and the Hour of one in the Afternoon.

That the Plaintiff was there ready for that Purpoſe.

And that the ſaid *Nathan* on the ſaid 5th Day of *September*, in the ſaid Year of our Lord being the Day of Transfer came there at the ſaid Houſe, commonly called the *London Aſſurance-Office* (to wit) at the Hour of nine in the Forenoon, and remained there till the Hour of one in the Afternoon of the ſame Day; and during all that Time was ready, and offer'd to Transfer the ſaid 1000 *l.* Credit in the ſaid Stock to the ſaid *W.* and to receive of the ſaid *W.* the Sum of 950 *l.* according to the Rate of 95 *l.* for every 100 *l.* of the aforeſaid 1000 *l.* Credit in the ſaid Stock. And that the ſaid *W.* the ſaid 5th Day of *September*, in the Year aforeſaid, or at any other Time hath not accepted the ſaid 1000 *l.* Credit in the aforeſaid Stock, according to the ſaid Agreement, in the Whole amounting to 950 *l.* or any Part thereof, altho' the ſaid *W.* afterwards (that is to ſay) on the ſaid 5th day of *September*, and ſeveral Times afterwards, at the Pariſh and Ward aforeſaid, was by the ſaid *Nathan* requeſted ſo to do, but hath altogether refuſed to accept the ſaid Stock from the ſaid *Nathan*, or to pay for the ſame.

Laid another way.

And whereas the ſaid *William* afterwards (that is to ſay) the ſaid 26th Day of *Auguſt* in the ſaid Year, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, bought of the ſaid *Nathan* another 1000 *l.* Credit in the Stock of the ſaid Company, at and according to the Rate of 95 *l.* of like lawful Money for every 100 *l.* of the ſaid 1000 *l.* Credit in the ſaid Stock, amounting in the Whole to another 950 *l.* to be paid to the ſaid *Nathan* upon the Transfer of the ſaid Stock laſt mentioned to be made by the ſaid *Nathan* to the ſaid *William*, at the next opening of the Books for the Transfer of the ſaid Stock laſt mentioned; and in Conſideration that the ſaid *Nathan*, at the ſpecial Inſtance and Requeſt of the ſaid *William*, did then and there undertake, and faithfully promiſe to transfer to the ſaid *Wiliam* 1000 *l.* Credit in the ſaid Stock, at and according to the ſaid Price laſt mentioned, upon the then next opening of the Books for the transferring of the Stock laſt mentioned, he the ſaid *William* then and there undertook, and faithfully promiſed the ſaid *Nathan*, that he the ſaid *William* would accept the ſaid 1000 *l.* Stock laſt mentioned, from the ſaid *Nathan*; and upon the Transfer of the ſame, would well and truly content and pay for the ſame to the ſaid *Nathan*, according to the ſaid Rate and Price laſt mentioned; and the ſaid *Nathan* in Fact ſaith, that the firſt Day of the opening of the Transfer-Books of the ſaid Company, after the ſaid Agreement, was on the 5th Day of *September* in the ſaid Year of our Lord; and that the only Place for transferring the ſaid Stock the ſaid 5th Day of *September*, and long before, and continually afterwards hath been, and yet is at a certain Houſe called the *London Aſſurance-Office*, in the Pariſh and Ward aforeſaid; and the only Hours for transferring the ſaid Stock on the ſaid 5th Day of *September*, and always hitherto have been, and now are, between the Hours of nine in the Forenoon, and the Hour of one in the Afternoon of the ſame Day. And that he the ſaid *Nathan* on the ſaid 5th Day of *September*, in the Year aforeſaid, came to the ſaid Houſe, commonly called the *London Aſſurance-Office*, at the ſaid Hour of nine in the Forenoon, and tarried there till, and after the ſaid Hour of one in the Afternoon, and during all that Time was there ready, and offered to transfer the ſaid 1000 *l.*

Credit in the ſaid Stock, and to receive from the ſaid *William* the ſaid 950 *l.* for the ſame. And that the ſaid *William*, on the ſaid 5th Day of *September* in the Year aforeſaid, did not, or at any other Time, hath accepted the ſaid 1000 *l.* Credit laſt mentioned in the ſaid Stock, or paid to the ſaid *Nathan* the ſaid 950 *l.* laſt mentioned, or any Part thereof, altho' the ſaid *William* afterwards, (to wit) on the ſame 5th Day of *September*, and often afterwards at *London* aforeſaid, in the ſaid Pariſh and Ward, was requeſted by the ſaid *Nathan* ſo to do, but altogether hitherto hath, and ſtill doth refuſe to accept from the ſaid *Nathan* the ſaid Stock, or to pay for the ſame. Wherefore he the ſaid *Nathan* ſaith, that he is injured, and endamaged to the Value of 1000 *l.* and therefore brings this Suit, *and ſo forth.*

Declaration in Trover brought by Executor for Cattle loſt in the Life-time of the Teſtator.

Norfolk. *W. J.* late of *Thetford* in the ſaid County, was attached to anſwer *J. G.* Executor of the laſt Will and Teſtament of *R. G.* of a Plea of Treſpaſs on the Caſe, *and ſo forth.* And whereupon the ſaid *J.* by *H. S.* his Attorney complains, that whereas the ſaid *R.* in his Life-time (that is to ſay) the 20th Day of *September*, in the 5th Year of the Reign of our Sovereign Lord the King at *Thetford* aforeſaid, had been poſſeſſed of certain Cattle, (that is to ſay) one Bull, (*ſo mentioning the reſt of the Cattle as of his own proper Cattle,*) and being ſo poſſeſſed thereof afterwards (that is to ſay) the ſame Day and Year at *T.* aforeſaid, caſually loſt the ſaid Cattle out of his Hands and Poſſeſſion; which Cattle afterwards in the Life-time of the ſaid *R.* (that is to ſay) on the ſaid 20th Day of *September* in the ſaid Year at *T.* aforeſaid, came to the Hands and Poſſeſſion of the ſaid *W.* by his finding the ſame. Nevertheleſs the ſaid *W.* knowing the ſaid Cattle to be the proper Cattle of the ſaid *R.* and of Right to belong and appertain to him the ſaid *R.* in his Life-time, and intending craftily and ſubtilly to deceive and defraud the ſaid *R.* in his Life-time in this Behalf, hath not deliver'd the ſaid Cattle to the ſaid *R.* (altho' the ſaid *W.* was by the ſaid *R.* in his Life-time often thereunto required) but the ſaid *W.* afterwards in the Life-time of the ſaid *R.* (that is to ſay) the 25th Day of *September*, in the fifth Year aforeſaid, at *W.* aforeſaid, converted and diſpoſed of thoſe Cattle to the proper Uſe and Benefit of the ſaid *W.* to the Delay of the Execution of the Teſtament aforeſaid, and to the Damage of the ſaid *J.* of 40 *l.* and thereof he brings his Suit, *and ſo forth.* And he brings here into Court the Letters Teſtamentary of the ſaid *R.* by which it may appear to the Court, that he is Executor of the ſaid Will, and hath the Adminiſtration thereof, *and ſo forth.*

For obſtructing the Plt. of his Common.

Norfolk. *A. B.* complains of *C. D.* in the Cuſtody of the Marſhal, *and ſo forth*, for that whereas one *W. W.* Gentleman, had been ſeiſed in his Demeſne as of Fee, of and in the Manor of *D.* with the Appurtenances in *D.* in the County aforeſaid; and he the ſaid *W.* being ſo ſeiſed, the ſaid *W.* and his Anceſtors, and all thoſe whoſe Eſtate the ſaid *W.* now hath, of and in the ſaid Manor with the Appurtenances had, and from the Time of which the Memory of Man is not to the Contrary, have been accuſtom'd to have for their Farmers and Tenants of his ſaid Manor, Common of Paſture in a certain Place called *Jagger-Holes* in *D.* aforeſaid, containing three Acres of Paſture, for all his Cattle Levant and Couchant within the ſaid Manor, at all Times of the Year, belonging and appertaining only to the ſaid Manor. And the ſaid *W.* being ſo ſeiſed of the ſaid Manor, with the Appurtenances in Form aforeſaid, the ſaid *W.* the twenty-firſt Day of *April*, in the ſaid Year aforeſaid, (at ſuch a Place) demiſed, granted, and to farm let the ſaid Manor, with the Appurtenances, to the ſaid Plaintiff, to have and to hold the ſaid Manor, with the Appurtenances, to the ſaid Plaintiff, his Executors, Adminiſtrators and Aſſigns, from the ſaid twenty-firſt Day of *April*, in the Year aforeſaid, unto the full End and Term of twenty-one Years, by Virtue of which ſaid Demiſe, the ſaid Plaintiff entered into the ſaid Manor aforeſaid, with the Appurtenances, and was thereof and yet is poſſeſs'd. Nevertheleſs the ſaid (Defendant) not ignorant of the Premiſſes, but contriving and intending to hinder and deprive the ſaid Plaintiff of his ſaid Common of Paſture in the ſaid Place called *J.* he the ſaid (Defendant) incloſed the ſaid Place called *Jagger-holes*, with Hedges and Ditches, ſo that the ſaid (Plaintiff) could not put and drive his Cattle into the ſame Place call'd *J.* to feed the Graſs there Growing; by which the ſaid Plaintiff not only was excluded and hindered of his ſaid Common, in the ſaid Place called *J.* but the ſaid (Plaintiff) totally was deprived of, and loſt great Gains, Profits and Advantages, which he ought to have had and gain'd by his ſaid Cattle's depaſturing and feeding the Graſs growing in the ſaid Place called *J.* to uſe his Common aforeſaid, if the ſaid Defendant had not incloſed the ſaid Place with Hedges and Ditches. Whereupon the ſaid (Plaintiff) ſaith, that he is injured and endamaged to the Value of one hundred Pounds, and therefore brings this Suit, *and ſo forth.*

A Declaration in Caſe for enticing a Servant away from the Plaintiff, and receiving her into his Service.

Whereas one *Mary B.* on the 28th Day of *October*, in the Year of our Lord 1731 at *Weſtminſter*, in the ſaid County of *Middleſex*, was rightfully and lawfully retained into the Service of the aforeſaid (Plaintiff) to ſerve him in and about all his lawful and honeſt Affairs and Buſineſſes whatſoever for one whole Year then next following; and the ſame *M.* being ſo retained, continued in the Service of the ſaid Plaintiff for the Space of nine Months. And during that Time the ſaid *M.* ſo ſerved the ſaid (Plaintiff,) ſhe diligently employed herſelf in the Service of the ſaid Plaintiff, and thereby became capable of ſerving the ſaid Plaintiff in very important Affairs and Buſineſſes of great Concern of the ſaid Plaintiff. And the ſaid *B.* by the Occaſion of inſtructing her during that Time, ſuſtained no ſmall Labour and Expence. Notwithſtanding, the aforeſaid Defendant, not ignorant of the Premiſſes, but craftily and ſubtilly intending to deceive and defraud the ſaid Plaintiff, of all the Profits and Advantage, which the ſaid Plaintiff ſhould have received, by reaſon of the Service of the ſaid *M.* for the Time ſhe was retained as above, on the firſt Day of *June*, in the Year of our Lord 1732, at *Weſtminſter* aforeſaid, in the County aforeſaid, the ſaid *R.* incited and procured the ſaid *M.* then Servant to the ſaid (Plaintiff,) to depart and leave the Service of the ſaid (Plaintiff;) by Means of which inciting and procuring the ſaid *M.* to depart from the Service of the ſaid (Plaintiff,) afterwards, (to wit) on the ſaid firſt Day of *March*, in the Year laſt above mentioned at *Weſtminſter* aforeſaid, in the County aforeſaid, the ſaid *M.* departed and left the ſaid Service of the ſaid Plaintiff, without the Leave, and contrary to the Will and Conſent of the ſaid (Plaintiff;)

tiff;) and the ſaid Defendant afterwards, (to wit) on the ſame firſt Day of *March*, in the Year laſt mentioned, knowing the ſaid *M.* to be the Servant of the ſaid Plaintiff at *Weſtminſter* aforeſaid, in the County aforeſaid, admitted and received the ſaid *M.* into the Service of the ſaid (Defendant); by which the ſaid (Plaintiff) loſt all the Profit, Benefit and Advantage which he would have had, by reaſon of the Service of his ſaid Servant, for the Reſidue of the ſaid Term. Wherefore the ſaid (Plaintiff) ſaith that he is injured, and ſuſtains Damage, to the Value of ten Pounds, and therefore brings his Suit, *and ſo forth.*

An Action on the Caſe upon a Promiſe on a Bargain.

T. B. complains of *W. R.* Tanner, in the Cuſtody of the Marſhal, *and ſo forth*, for that whereas the ſaid *W. ſuch a Day, and Year, and Place*, had agreed with him the ſaid *T.* to buy the Hides and Skins of all and ſingular the Oxen, Horſes, Cows and Calves, which he the ſaid *T.* from the ſaid (*ſuch a Day*) until (*ſuch a Day*) then next following, ſhould happen to kill or ſlay, the ſaid *W.* in Conſideration thereof undertook, and then and there faithfully promiſed the ſaid *T.* that he the ſaid *W.* would well and truly pay to him the ſaid *T.* for every Hide of each Ox or Heifer, by him the ſaid *T.* within the Time aforeſaid killed or ſlain, and by him the ſaid *T.* to him the ſaid *W.* within that Time, delivered, three Shillings and four Pence; and for every Hide of a Cow, by him the ſaid *T.* within the ſaid Time killed and delivered as aforeſaid, two Shillings; and for every Dozen of Calve-Skins by him the ſaid *T.* within the Time aforeſaid, killed and delivered, as aforeſaid, four Shillings. By reaſon of which ſaid Promiſe and Undertaking of him the ſaid *W.* made as above, he the ſaid *T. B.* delivered to the ſaid *W.* five hundred and three Hides of Oxen and Heifers, and fifty two Hides of Cows, and fifty Dozen of Calve-Skins killed by him the ſaid *T.* within the Time aforeſaid, according to the Tenor of the ſaid Bargain, at divers Days and Times within the Time aforeſaid at *S.* aforeſaid, the true Value and Price whereof delivered, as above, according to the ſaid Bargain, amounted unto the Sum of eighty-eight Pounds, ſixteen Shillings and ten Pence. Nevertheleſs the ſaid *W.* contriving and fraudulently intending, craftily and ſubtilly to deceive and defraud the ſaid *T.* in that Particular, altho' the ſaid *W.* (*ſuch a Day and Year*) and afterwards at *S.* aforeſaid, hath been required to pay to him the ſaid *T. B.* the aforeſaid eighty-eight Pounds, ſixteen Shillings and ten Pence, according to the ſaid Bargain. Yet he the ſaid *T. B.* hitherto hath not paid the ſame, or any Part thereof, but hitherto altogether hath, and ſtill doth refuſe ſo to do, to the Damage of the ſaid Plaintiff one hundred Pounds; and therefore he brings this Suit, *and ſo forth.*

A Declaration upon a Promiſe to pay the Plt. a Sum of Money for procuring of Stock to be transferred, and another Sum for his Expences and Trouble therein.

Middleſex. William Highmore late of *Weſtminſter*, in the ſaid County, Gen. was attached to anſwer to *Richard Nicholſon*, of a Plea of Treſpaſs on the Caſe, *and ſo forth.* And whereupon the ſaid *Richard* by *John Ferrett* his Attorney complains, that whereas on the 31ſt Day of *January*, in the Year of our Lord 1725 at *Weſtminſter*, in the County of *Middleſex*, a certain Diſcourſe aroſe, and was had between the ſaid *Richard* and the ſaid *William*, of and concerning three hundred Pounds Stock in the Capital united Stock of the *Eaſt-India* Company, belonging to one *Iſabella Wybergh* Widow, as Executrix of *Thomas Wybergh* her Son, then lately deceaſed, and of and concerning the Transferring of the ſame Stock by the ſaid *W. H.* by Virtue of a certain Letter of Attorney made by the ſaid *Iſabella* before that Time, to the ſaid *W.* And upon that Diſcourſe it was then and there agreed between the ſaid *Richard* and *William*, that the ſaid *Richard* ſhould endeavour to procure a Liberty and Licenſe, to the ſaid *William Highmore*, to transfer the ſaid 300 *l.* in the capital Stock of the ſaid Company, by Virtue of the ſaid Letter of Attorney; and that the ſaid *William* ſhould pay to the ſaid *Richard*, or his Order, the Sum of one hundred and fifty Pounds for his Pains and Trouble therein, and ten Pounds for the Time, Expences and Charges of the ſaid *Richard*, laid out and imployed, in and about ſuch Transfer of the ſaid Stock, and the procuring of the ſame, as aforeſaid. And thereupon, in Conſideration that the ſaid *Richard* had undertaken, and then and there had promiſed to perform that Agreement in every Thing on his Part to be performed, the ſaid *William* then and there undertook, and to the ſame *Richard* faithfully promiſed, that he would perform all and every Thing in the ſaid Agreement contained on his Part to be performed. And the ſaid *Richard* in Fact ſaith, that he the ſaid *Richard* afterwards, (that is to ſay) the Day of in the Year of our Lord 1725, at the ſpecial Inſtance and Requeſt of the ſaid *W.* endeavoured to procure ſuch Leave and Licenſe for the ſaid *William*, to transfer the ſaid three hundred Pounds Capital Stock aforeſaid, of the ſaid Company, by Virtue of the ſaid Letter of Attorney; and then and there procured Liberty and Licenſe to the ſaid *William*, to transfer the ſaid three hundred Pounds Capital Stock, in the Stock of the ſaid Company, by Virtue of the ſaid Letter of Attorney accordingly; and the ſaid *Richard* afterwards, (that is to ſay) the ſame Day and Year laſt mentioned, at *Weſtminſter* aforeſaid, gave an Account thereof to the ſaid *William*, and requeſted the ſaid *William* to pay to the ſaid *Richard*, the ſaid Sum of one hundred and fifty Pounds, and ten Pounds contained in the ſaid Agreement. Nevertheleſs the ſaid *William* hath not paid the ſaid Sums of Money contained in the ſaid Agreement, or any Part thereof to the ſaid *Richard*, but then and there, and always afterwards hitherto hath, and ſtill doth refuſe ſo to do.

Laid another way.

And whereas on the ſaid 31ſt Day of *January*, in the Year aboveſaid, at *Weſtminſter* aforeſaid, in the County of *Middleſex*, in Conſideration that the ſaid *Richard* then and there had undertaken, and then and there promiſed to the ſaid *William*, that he the ſaid *Richard* wouldpro cure other three hundred Pounds Capital Stock, then being in the Stock of the *Eaſt-India* Company, belonging to the ſaid *Iſabella Wyberg*, to be transferred in the Transfer-Books of the ſaid Company, kept for that Purpoſe, according to the Manner of transferring the ſaid Stock of the ſaid Company, at the Inſtance of the ſaid *William*, by Virtue of a certain Letter of Attorney, before that Time made by the ſaid *Iſabella* to the ſaid *William*, he the ſaid *William* in Conſideration thereof undertook, and then and there faithfully promiſed, that he the ſaid *William* would pay to the ſaid *Richard*, or his Order, the Sum of one hundred and fifty Pounds for his Induſtry, and the further Sum of ten Pounds for his Expences, Time and Trouble, in and about transferring thereof, whenever he ſhould be thereto requeſted; and the ſaid *Richard* afterwards, (that is to ſay) the Day and Year aboveſaid, at *Weſtminſter* aforeſaid, requeſted the ſaid *William* to pay him the ſaid Sum of one hundred and fifty Pounds, and ten Pounds according to his ſaid Promiſe: Nevertheleſs the ſaid *William* not regarding his ſaid Promiſes and Undertakings laſt mentioned, made in Form aforeſaid, but contriving, and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *Richard* in this Particular, hath not paid to the ſaid *Richard*, the ſaid one hundred and fifty Pounds, and the ſaid Sum of ten Pounds, or any Part thereof, altho' often requeſted thereto, but hath altogether refuſed, and doth yet refuſe ſo to do, to the Damage of the ſaid *Richard* 260 *l.* and therefore he brings this Suit, *and ſo forth.*

And further, the Declaration ſets forth, that the Defendant was indebted to the Plaintiff, in the Sum of one hundred and ſixty Pounds, for ſo much Money lent by the Plaintiff to the Defendant, and being ſo indebted, that he promiſed to pay, *&c.* Wherefore the ſaid *Richard* ſaith, that he is injured, and ſuſtains Damage to the Value of one hundred and ſixty Pounds; and therefore brings this Suit, *and ſo forth.*

This Declaration was drawn by **Sergeant Branthwayte.**

Stinton againſt Yates.

Hillary, the Thirty-ſixth and Thirty-ſeventh of King *Charles* the Second.

An Action upon the Caſe upon an Aſſumpſit concerning the Maintenance of a Baſtard. Lut. 222.

Reciting the Maintenance.

The Communication about the ſame.

The ſpecial Agreement made upon ſuch Communication.

Mary Yates, late of the City of *Worceſter*, in the County of the City of *Worceſter*, Widow, was attached to anſwer to *Rowland Stinton* of a Plea of Treſpaſs upon the Caſe, *and ſo forth*; And whereupon the ſaid *Rowland* by *Thomas Twittye* his Attorney complains, that whereas *Richard Yates*, Son of the ſaid *Mary Yates*, had procured and obtained carnal Knowledge and Copulation of one *Johanna Stinton*, Daughter and Servant to, and dwelling with the ſaid *Rowland*, and got the ſaid *Johanna* with a Male Child, which ſaid *Johanna* was afterwards delivered of ſuch Male Child; and the ſaid *Rowland*, in order to keep himſelf from the Maintenance of the Infant, intended to proſecute the ſaid *Richard* for getting the ſaid Infant, upon the Body of the ſaid *Johanna*, as above. And the aforeſaid *Mary* deſiring to compoſe the Difference aforeſaid, on the 12th Day of *February* in the 35th Year of the Reign of his Preſent Majeſty, at *Claynes* in the County aforeſaid, at the Requeſt of the ſaid *Mary*, a certain Diſcourſe was had, and aroſe between the ſaid *Mary* and the ſaid *Rowland*, of and concerning the Maintaining the ſaid Infant, ſo begotten by the ſaid *Richard*, on the Body of the ſaid *Johanna* as aforeſaid; upon which Diſcourſe, afterwards (to wit) on the ſame 12th Day of *February*, in the 35th Year aforeſaid, at *Claynes* aforeſaid, it was agreed between the ſaid *Rowland* and the ſaid *Mary*, in Manner and Form following, (that is to ſay) that if the ſaid *Rowland* would undertake to keep and maintain the ſaid Infant for five or ſix Years, and not proſecute the ſaid *Richard*, then the ſaid *Mary* would pay to the ſaid *Rowland* 10 *l.* of lawful Money of *England*, whether the Infant ſhould live or die, in Manner and Form following, (that is to ſay) one Shilling in Hand, and ninety-nine Shillings more, Parcel of the ſaid Money, upon *Thurſday* in the then next following Week, and the five Pounds Reſidue of the ſaid 10 *l.* at 20 *s.* a Year, which ſaid Sum of 5 *l.* the ſaid *Mary* would well and truly

Punctual Promiſes.

ſecure by a Bond to be entered into by one *Robert Yates*, and *Edward Yates*, two Sons of the ſaid *Mary*; and after the Expiration of the ſaid five or ſix Years, the ſaid *Mary* would maintain the ſaid Infant at her own proper Coſts and Charges. And thereupon the ſaid *Mary*, afterwards, (that is to ſay) on the ſaid 12th Day of *February*, in the 35th Year aforeſaid, at *Claynes* aforeſaid, in Conſideration that he the ſaid *Rowland*, at the ſpecial Inſtance and Requeſt of the ſaid *Mary*, then and there had, well and truly undertook, and faithfully promiſed to the ſaid *Mary*, to perform the ſaid Agreement in every thing on his Part to be performed, ſhe the ſaid *Mary* undertook, and then and there faithfully promiſed to perform the ſaid Agreement in every Thing on her Part to be perfomed. And the ſaid *Rowland* in Fact ſaith, that he the ſaid *Rowland* truſting to the Promiſe and Undertaking of the ſaid *Mary*, as above, the ſaid *Rowland*, at the ſpecial Inſtance and Requeſt of the ſaid *Mary*, afterwards, (to wit) on the ſaid 12th Day of *February*, in the 35th Year aforeſaid, and from thence hitherto maintain'd the ſaid Infant, and never proſecuted the ſaid *Richard* for the ſame.

The Breach.

Nevertheleſs the ſaid *Mary*, not regarding her Undertaking and Promiſe aforeſaid, but contriving, and fraudulently intending, craftily and ſubtilly to defraud and deceive the ſaid *Rowland*, hath not paid the ſaid ninety-nine Shillings, Parcel of the ſaid ten Pounds, upon the *Thurſday* laſt above mention'd, nor hath ſecured to the ſaid *Rowland* the five Pounds, Reſidue of the ſaid ten Pounds, by Bond of the ſaid *Robert* and *Edward*, to the ſaid *Rowland*. Altho' the ſaid *Mary*, afterwards (to wit) on the 10th Day of *October*, in the ſaid 35th Year of the Reign of our Sovereign Lord the King, that now is, and ſeveral Times after, at *Claynes* aforeſaid, hath been by the ſaid *Rowland* thereto required, but hitherto ſhe altogether hath, and ſtill doth refuſe ſo to do, to the Damage of the ſaid *Rowland* 20 *l*. And therefore he brings his Suit, *and ſo forth*.

An Exception was taken to this Declaration, that there was not a ſufficient Averment that he had promiſed he would maintain the Child for five or ſix Years; and that it was a Condition precedent to all the Agreement, and not ſufficiently expreſſed; but the Court held the Declaration to be good, for the mutual Promiſe of the Plaintiff to the Defendant was a good Conſideration. Lut. 224.

A Declaration upon a Promiſe to pay 40 l. to the Plaintiff in Conſideration the ſaid Plaintiff would not further proſecute a Suit then begun in the Court of Common Bench for a Treſpaſs.

Derby (to wit): *J. S.* complaineth of *G. C.* in the Cuſtody of the Marſhal, *and ſo forth*, That whereas the ſaid *J.* on the third Day of *March*, in the fifth Year of the Reign of our Sovereign Lord *George* the Second, King of *Great Britain*, *and ſo forth*, at *Weſtminſter*, in the County aforeſaid, at the ſpecial Inſtance and Requeſt of the ſaid Defendant, agreed with the ſaid Defendant, and faithfully promiſed to him, that he the ſaid Plaintiff would not further proſecute the ſaid Defendant (in a Suit which was then depending in the Court of our late Sovereign Lord *George*, late King of *Great Britain*, before the ſaid late King himſelf) for a certain Treſpaſs which the ſaid Defendant then and there acknowledged to be committed by the ſaid Defendant, againſt the ſaid Plaintiff, in certain Lands and Tenements of the ſaid Plaintiff in (to wit) a Meſſuage, and twenty Acres of Land in *W.* in the County aforeſaid, the ſaid Defendant then and there, in Conſideration thereof undertook, and then and there faithfully promiſed to the ſaid Plaintiff, that he the ſaid Defendant would well and faithfully pay to the ſaid Plaintiff, the Sum of ſeventeen Pounds of lawful Money of *Great Britain*, in Diſcharge and Satisfaction of the ſaid Treſpaſs, before the Feaſt of *Eaſter* then next following. And the ſaid Plaintiff in Fact ſaith, that he truſting to the ſaid Promiſe of the ſaid Defendant, hath not hitherto, ſince the making of the ſaid Promiſe, further proſecuted the the ſaid Defendant for the Treſpaſs aforeſaid. And the ſaid Plaintiff in Fact ſaith, that the ſaid Feaſt of *Eaſter* then next following the making the ſaid Promiſe of the Defendant, to the ſaid Plaintiff as above, was on the Day of in the ſaid fifth Year of the Reign of our Sovereign Lord the King that now is. Notwithſtanding the ſaid Defendant, not caring for, or regarding his ſaid Promiſe, but contriving, and fraudulently intending in this Behalf, craftily and ſubtilly to deceive and defraud the ſaid Plaintiff; the ſaid Defendant hath not yet paid to the ſaid Plaintiff the ſaid Sum of forty Pounds, or any Part thereof; altho' the ſaid Defendant, afterwards (that is to ſay) on the firſt Day of *May* in the ſaid fifth Year of the Reign of our Sovereign Lord the King that now is, and often afterwards, (to wit) at *Weſtminſter* aforeſaid, in the County aforeſaid, hath been requeſted ſo to do, but hath altogether hitherto denied, and yet doth deny to pay the ſame to the ſaid Plaintiff; wherefore he ſaith that he is injured, and ſuſtains Damage, to the Value of twenty Pounds; and therefore brings this Suit, *and ſo forth.*

For exceſſive working the Plaintiff's Mare.

That whereas the ſaid *B. ſuch a Day and Year* at *C.* in Conſideration that the ſaid *A.* at the ſpecial Inſtance and Requeſt of the Defendant, had deliver'd at *M.* the Mare of the ſaid Plaintiff, to till and plow certain Lands of the ſaid Defendant in *P.* for and during the Space of ten Days then next following, the ſaid *B.* undertook, and then and there faithfully promiſed the ſaid Defendant, he would redeliver the ſaid Mare ſafe and ſound to the ſaid Plaintiff, after the End of the aforeſaid ten Days, upon Demand; nevertheleſs the ſaid (Defendant) contriving and intending to deceive and defraud the ſaid Plaintiff, did ſo exceſſively, and inordinately Labour and Tire the ſaid Mare, in the ten Days, ſo that by ſuch exceſſive Working the ſaid Mare died, to the Damage of the Plaintiff twenty Pounds; and thereupon he brings this Suit, *and ſo forth.*

A Declaration in Caſe for annoying the Plt. by erecting a Lime-kiln near the Meſſuage of the Plaintiff.

A. B. complains of *E. F.* in the Cuſtody of the Marſhal, *and ſo forth*, for this Cauſe, (to wit) that whereas the ſaid *A. B.* on the tenth Day of *October*, in the fifth Year of the Reign of his preſent Majeſty, *George* the Second, King of *Great Britain, and ſo forth*, was, and for many Years then next before had been, and alſo now is ſeiſed in his Demeſne as of Fee, (*or poſſeſſed for a Term of Years, as the Caſe is*) of and in a Meſſuage and Garden, with the Appurtenances in *London*, (that is to ſay) in the Pariſh of St. *Michael Queenhithe*, in the Ward of *Queenhithe*. And being ſo ſeiſed (or poſſeſs'd) the ſaid *E. F.* the Day and Year aboveſaid, and many other Days and Times between that Day and the firſt Day of *January* the next following, contriving to deprive the ſaid *A. B.* of the whole Profit, Advantage and Eaſement of the ſaid *A.*'s Meſſuage and Garden at *London* aforeſaid, in the Pariſh and Ward aforeſaid, in a certain Place called *B.* in the ſaid Pariſh of *Queenhithe*, in the ſaid Ward of *Queenhithe*, the ſaid *E. F.* burnt Chalk in a certain Furnace, called a Lime-Kiln, to make Lime thereof; by reaſon of which, the ſtinking and unwholſome Fume or Smoke ariſing therefrom, came upon the ſaid Meſſuage and Garden of the ſaid *A. B.* and penetrated into the Herbs and Fruits at that Time there growing and being; by which not only the Herbs and Fruits then growing became dry, wither'd and dead, but alſo the ſaid *A. B.* from the ſaid firſt Day of *March*, in the ſaid fifth Year of the Reign of his ſaid preſent Majeſty, to the ſaid firſt Day of *April* then next following, totally loſt the whole Eaſement, Profit and Advantage of his ſaid Meſſuage and Garden, to the great Damage and Wrong of the ſaid *E.F.* Wherefore the ſaid *E. F.* ſaith, that he is injured and endamaged, to the Value of five hundred Pounds; and therefore brings this Suit, *and ſo forth.*

Special Promiſe touching Money by Marriage.

Suffolk (to wit): *Richard Holbridge*, late of *Combes* in the ſaid County, Yeoman, Executor of the laſt Will and Teſtament of *Francis Holbridge*, was attached to anſwer to *John Guiſer* of a Plea of Treſpaſs upon the Caſe, *and ſo forth*; and whereupon the ſaid *John*, by *Barnaby Gibſon* his Attorney complains, that whereas the ſaid *Francis* in his Life-time, (that is to ſay) on the 20th Day of *September*, in the 21ſt Year of the Reign of his preſent Majeſty, at *Mendelſham*, in Conſideration that the ſaid *John*, at the ſpecial Inſtance and Requeſt of the ſaid *Francis*, married one *Cooper*, then Wife to the ſaid *John*, undertook, and then and there faithfully promiſed the ſaid *John*, that he the ſaid *Francis* would give to the ſaid *John* two hundred Pounds, to be paid to the ſaid *John*, his Executors or Adminiſtrators, at the Death of the ſaid *Francis*, by the Executors of the laſt Will and Teſtament of him the ſaid *Francis*, made and appointed by him the ſaid *Francis*, when the ſame Executors were by the ſaid *John* thereto required. And the ſaid *John* in Fact ſaith, that he, giving Credit to the ſaid Promiſe and Undertaking of the ſaid *Francis*, at the ſpecial Inſtance and Requeſt of him the ſaid *Francis*, afterwards in the Life-time of the ſaid *Francis*, (that is to ſay) on the 22d Day of *September*, in the ſaid 21ſt Year at *Mendleſham* aforeſaid, married the ſaid *Elizabeth*, and the Eſpouſals between the ſaid *John* and the ſaid *Elizabeth* were then and there had and ſolemnized; whereof the ſaid *Francis* in his Life-time, and the ſaid *Richard*, after the Death of the ſaid *Francis*, had Notice, (that is to ſay) at *Mendleſham* aforeſaid: Neverthele ſs the ſaid *Francis* in his Life-time, and the ſaid *Richard* after his Deceaſe, not regarding the ſaid Promiſe and Undertaking of the ſaid *Francis*, made as above, but the ſaid *Francis* in his Life-time, and the ſaid *Richard* after his Deceaſe, fraudulently intending to deceive and defraud the ſaid *John*, the ſaid *Francis* at the Time of his Death, did not give the ſaid *John* the ſaid two hundred Pounds, nor hath the ſaid *Richard* paid to the ſaid *John* the ſaid two hundred Pounds, or made him any Satisfaction for the ſame in any Manner howſoever, altho' the ſaid *Richard*, after the Death of the ſaid *Francis*, (that is to ſay) on the tenth Day of *June*, in the fifth Year of the Reign of his preſent

Majeſty at *Mendleſham* aforeſaid, by the ſaid *John* was thereto required, hath altogether refuſed, and ſtill doth refuſe to pay the ſaid two hundred Pounds, or to make the ſaid *John* any Satisfaction for the ſame, to the Damage of the ſaid *John* two hundred and twenty Pounds; and therefore he brings this Suit, *and ſo forth.*

A Declaration for printing the Plaintiff's Copy of the Pilgrim's Progreſs without his Leave. Lilly 67.

London. *Nathaniel Ponder* complains of *Thomas Braddill*, in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, being before the King himſelf; for that whereas on the firſt Day of *May*, in the thirtieth Year of the Reign of his preſent Majeſty *Charles* the Second, King of *Great Britain*, *and ſo forth*, the ſaid *Nathaniel* was, and continually afterwards hitherto hath been, and now is the true Owner and Proprietor of the Copy of a certain Book, *intitled the* Pilgrim's Progreſs *from this World to that which is to come, delivered under the Similitude of a Dream, wherein is diſcover'd, the Manner of his ſetting out his dangerous Journey, and ſafe Arrival at the deſired Country, by* John Bunyon; and that he the ſaid *Nathaniel*, after he ſo became a Proprietor of the ſaid Book, he printed off 2000 Books of the ſame Copy; and on the twentieth Day of *January*, in the thirtieth Year of the Reign of his ſaid preſent Majeſty, he had in his Hands at *London* aforeſaid, in the ſaid Pariſh and Ward, an hundred Books, or more, of that Impreſſion; and on the ſame twentieth Day of *January*, in the thirtieth Year aforeſaid, at *London* aforeſaid, in the ſaid Pariſh and Ward, was imprinting 4000 Books more of the ſame Copy. Neverthele ſs the ſaid *Thomas* well knowing the Premiſſes, but contriving and fraudulently intending wholly to deprive the ſaid *Nathaniel* of all the Benefit of his ſaid Copy, afterwards (that is to ſay) on the ſame twentieth Day of *January*, in the thirtieth Year aforeſaid, at *London* aforeſaid, in the ſaid Pariſh and Ward, without the Leave and Conſent of the ſaid *Nathaniel*, did print, and then and there expoſe to ſale, four thouſand Books of the ſaid Book of the ſaid *Nathaniel*, intitled, *the* Pilgrim's Progreſs, *from this World to that which is to come, delivered under the Similitude of a Dream; wherein is diſcover'd the Manner of his ſetting out his dangerous Journey, and ſafe Arrival at the deſired Country, by* John Bunyon; whereby the ſaid *Nathaniel* loſt, and was deprived of all the Profit, Benefit, and Advantage of his ſaid Book, intitled, *the* Pilgrim's Progreſs *from this World to that which is to come, delivered under the Similitude of a Dream; wherein is diſcovered the Manner of his ſetting out his dangerous Journey, and ſafe Arrival at the deſired Country, by* John Bunyon; whereby the ſaid *Nathaniel* ſaith, he is injured and endamaged to the Value of 200 *l.* and therefore he brings this Suit, *and ſo forth.*

Langhton againſt **Ward.**

Trinity Term, in the Seventh of King *William* the Third.
Roll 1703.

An Action upon the Caſe for Diſturbance of the Plaintiff in the Uſe of a Way. Lut. 112.

The Plaintiff ſeiſed in Fee of a Cloſe of Land called L. and of a Cloſe or Meadow called G. and then preſcribes for a Way.

That the Defendant with his Carts and Carriages ſpoil'd the ſaid Way, ſo that the ſaid Way was of no Uſe to the Plaintiff.

Yorkſhire. *Thomas Ward*, late of *Tickhill*, in the ſaid County, Yeoman, was attached to anſwer to *William Langhton*, Gentleman, of a Plea of *Treſpaſs on the Caſe, and ſo forth.* And whereupon the ſaid *William*, by *A. B.* his Attorney, complains, that whereas on the 10th Day of *May*, in the ſixth Year of the Reign of our Sovereign Lord King *William*, and Lady *Mary*, late King and Queen of *England*, and long before he had, and continually afterwards hitherto hath been, and now is ſeiſed of, and in a Cloſe of Land, with its Appurtenances called *Langdale*, lying and being in the Pariſh of *Tickhill* aforeſaid, and of a Cloſe of Meadow Ground call'd *Goody Ing*, lying and being in the ſaid Pariſh, and contiguouſly adjoining to the ſaid Cloſe called *Langdale*, in his Demeſne as of Fee; and the ſaid *William Langhton*, and all thoſe whoſe Eſtate he the ſaid *William* now hath, and during all that Time had, of and in the Tenements aforeſaid, with their Appurtenances, Time out of Mind have had, and were uſed and accuſtomed to have a certain Way, as well a Foot as a Horſe Way, for his Carts and Carriages, from the Common Highway, in the ſaid Pariſh of *Tickhill*, (which ſaid Highway was leading from the Towns of *Tickhill* and *Wadworth* in the ſaid County,) in, by and through a certain Place called *Badſley-well Lane*, lying between the ſaid Pariſh of *Tickhill*, and ſo in and through a certain other Place call'd *Langdale's Lane*, and from thence to, by and thro' the ſaid Cloſe call'd *Langdale*, and ſo back again from the ſaid Cloſe to the ſaid Highway, every Year, at all Times in the Year, through the Way deſcribed, in the Manner as above, belonging only to his ſaid Tenements with their Appurtenances. Nevertheleſs the ſaid *Thomas*, well knowing the Premiſſes, but contriving and fraudulently intending to hinder, and as much as in him lay, to deprive the ſaid *William* of the Uſe of his ſaid Way, with Carts and Carriages on the ſaid 10th Day of *May*, in the ſixth Year aforeſaid, ſpoiled the ſaid *Thomas* and damnified the ſaid Way, in the ſaid Place called *Badſley-well Lane*, in ſuch a Manner with Carts and Carriages, (that is to ſay) with the Wheels of the ſame, that the ſaid Way became of no Uſe to the ſaid *William Langhton*, to the Damage of the ſaid *William Langhton* 20 *l.* and therefore he brings this Suit, *and ſo forth.*

Bar.

That one W. V. was ſeiſed in Fee,

And the ſaid *Thomas* by *Robert Veſey* his Attorney, comes and defends the Force, Injury and Damages, and whatever elſe he ought to defend, when and where the Court will take the ſame into their Conſideration; and ſaith, that the ſaid *William* ought not to have his ſaid Action againſt him, *by Proteſtation ſaying* that the ſaid Declaration, and the Matters therein contained are inſufficient in Law for him the ſaid *William*, to ſupport his ſaid Action againſt the ſaid *Thomas*, for Plea the ſaid *Thomas* ſaith that one *William Veſey* Gentleman, on the ſaid 10th Day of *May*, in the ſaid ſixth Year, was, and long before had, and continually ever ſince hath been, and now is ſeiſed of and in a Cloſe of Land, called *Badſley-well Cloſe*, with its Appurtenances, in the ſaid Pariſh of *Tickhill*, in his Demeſne as of Fee; and that the ſaid *William Veſey*, and all thoſe whoſe Eſtate he hath, were uſed and accuſtomed to have, and had a certain Way, a Foot as well as a Horſe-way, and for his Carts and Carriages from the ſaid common Highway in *Tickhill* aforeſaid, above ſpecified in the ſaid Declaration, in, by and through the ſaid Place, call'd *Badſley-well Lane*, and from thence, to, by and through the ſaid Cloſe, called *Badſley-well Cloſe*, and ſo back again from the ſaid Cloſe, called *Badſley-well Cloſe*, thro' the ſaid common Highway at *Tickhill* aforeſaid, every Year, at all Times in the Year, whenever it pleaſed him ſo to do; by which means the ſaid *Thomas*, as Servant to, and by the Command of the ſaid *William Veſey*, on the ſaid 10th Day of *May*, in the ſaid ſixth Year, in order to make Uſe of his ſaid Way, with Carts and Carriages of the ſaid *William Veſey*, did go and paſs from the ſaid Highway, in, by and through the ſaid Place, call'd *Badſley-well Lane*, and from thence to, by and through the ſaid Cloſe, call'd *Badſley-well Cloſe*, and from thence returned back again, as it was lawful for him ſo to do; and ſo in going, paſſing and returning, in, by and through the ſaid Way, he the ſaid *Thomas* did break up the Soil of the ſaid Way, in the ſaid Cloſe call'd *Badſley-well Lane*, with the Wheels of the ſaid Carts and Carriages, doing as little Damage as it was poſſible for him to do, in making Uſe of the ſaid Way: Which ſaid Spoiling and Damnifying the ſaid Way, in the ſaid Place, call'd *Badſley-well Lane*, is the ſame Spoiling and Damnifying of the ſame, whereof the ſaid *William* hath above declared againſt him; and this he is ready to verify; wherefore he prays Judgment if the ſaid *William Langhton* ought to have his ſaid Action againſt him the ſaid *Thomas*, *and ſo forth*.

that the ſaid W. V. Time out of Mind had a Way— from the commom Way in the Declaration by and and thro' the ſaid Place, call'd B. Lane, and from that to and in the ſaid Cloſe, call'd B. Cloſe, and ſo back again, and there juſtifies as Servant to Veſey, and with the ſaid Veſey's Carts, &c.

And the ſaid *William Langhton* ſaith, that notwithſtanding any thing above alledged by the ſaid *Thomas*, he the ſaid *William* ought not to be precluded from having his ſaid Action againſt him the ſaid *Thomas*; becauſe the ſaid *William* ſaith, that Right and True it is, that the ſaid *William Veſey*, Gentleman, in the ſaid ſixth Year was, and long before had, and ever ſince hath been ſeiſed of and in the ſaid Cloſe of Land, call'd *Badſley-well Cloſe*, with its Appurtenances, in the ſaid Pariſh of *Tickhill*, in his Demeſne as of Fee; and that the ſaid *William Veſey*, and all thoſe whoſe Eſtate he hath, and during all that Time had of and in his ſaid Cloſe, with its Appurtenances, Time out of Mind uſed, and were accuſtomed to have, and had a certain Way, as well a Foot as a Horſe Way, and for his Carts and Carriages from the ſaid common Highway in *Tickhill* aforeſaid mentioned in the ſaid Declaration, in, by and through the ſaid Place, called *Badſley-well Lane*, and from thence to, in, by and through the Cloſe of the ſaid *William Veſey*, called *Badſley-well Cloſe*, and ſo back again from the ſaid Cloſe, called *Badſley-well Cloſe*, through the ſaid Way, to the ſaid common Highway in *Tickhill* aforeſaid, every Year, at all Times in the Year, at his Pleaſure, as the ſaid *Thomas* above in pleading hath alledged. But the ſaid *William Langhton* further ſaith, that the ſaid *Thomas*, in making Uſe of the ſaid Way, unjuſtly

Replication, confeſſing that Veſey had ſuch a Way.

But further, the Plaintiff ſaith, that the Defendant went further than the Cloſe of Veſey, call'd B. Cloſe, to another Cloſe, call'd W. L.

juſtly, and contrary to the Form of the ſaid Preſcription, went and paſſed through with his Carts and Carriages from the ſaid common Highway, in, by and through the ſaid Place, called *Badſley-well Lane*, and from thence to and in the ſaid Cloſe, called *Badſley-well Cloſe*, and further than the ſaid Cloſe, called *Badſley-well Cloſe*, into another Cloſe of the ſaid *William Veſey*, called *Wharton Langdals*, and ſo back again from the ſaid Cloſe, called *Wharton Langdals*, to the ſaid Cloſe, called *Badſley-well Cloſe*, and ſo to the ſaid Highway deſcribed in Manner aforeſaid; and in going to the ſaid Cloſe, called *Wharton Langdals*, and from thence returning with his Carts and Carriages in the Manner, and by the Way aforeſaid, he ſo ſpoiled and damnified the ſame Way, in the ſaid Place, called *Badſley-well Lane*, with the Wheels of his ſaid Carts and Carriages, that the ſaid Way became of no manner of Uſe to the ſaid *William Langhton*; and this he is ready to verify. Wherefore he prays Judgment, and his Damages to be awarded to him, by Reaſon of the Premiſſes, *and ſo forth*.

Rejoinder. In which no new Matter is alledged, but the Defendant only relies upon the Matter before pleaded.

And the ſaid *Thomas*, in as much as the ſaid *William Langhton* hath above acknowledged, that the ſaid *William Veſey*, and all thoſe whoſe Eſtate he hath, and as aforeſaid had of, and in the ſaid Cloſe, called *Badſley-well Cloſe*, with its Appurtenances, Time out of Mind, have uſed, and been accuſtomed to enjoy the ſaid Way, leading between the ſaid common Highway, and the ſaid Cloſe, by and through the ſaid Place called *Badſley-well Lane*, every Year, at all Times in the Year at his Will, as the ſaid *Thomas* hath above alledged; ſo that it is plain, that the ſaid Way, by and through the ſaid Place, called *Badſley-well Lane*, is not Appurtenant only to the ſaid Tenements of the ſaid *William Langhton*, as he above ſuppoſes: And in as much as it was, and is lawful for the ſaid *William Veſey* to go into the ſaid Cloſe, called *Badſley-well Cloſe*, and from thence into the ſaid other Cloſe, called *Wharton Langdals*, and to return back again from thence into the ſaid Cloſe, called *Badſley-well Cloſe*; and this without doing any Damage to any Perſon whatſoever, as before, he prays Judgment, whether the ſaid *William Langhton* ought to have his ſaid Action againſt him the ſaid *Thomas*, *and ſo forth*.

To this there was a Demurrer, and a Joinder in Demurrer.

The Caſe.

Reſolved by the whole Court, That the Defendant having laid his Preſcription only to the Cloſe, called *Badſley-well Cloſe*, could not juſtifie to go further in the other Cloſe of *William Veſey*, called *Wharton Langdals*, according to 1 *Roll's Abr.* 91. Letter *R. Sanders* and *Moſes*'s Caſe, and 1 *Mod.* 190. *Howel* and *King*'s Caſe.

Obſerve that the Declaration is, that the Defendant had ſpoiled the Way with his Carts and Carriages; and the Defendant juſtifies with the Carts and Carriages of *William Veſey*. *Qu.* of this; for the Reporter ſays it ſeems to him to be material.

Pleas before our Sovereign Lord the King at Weſtminſter, *of* Hillary *Term, in the ninth Year of the Reign of our Sovereign Lord* William *the Third, King of* England, *and ſo forth.* Roll. 437.

Iveſon againſt Moore.

Yorkſhire. Be it remember'd that heretofore, (that is to ſay) in the Term of St. *Michael* laſt paſt, *Henry Iveſon* came before our Sovereign Lord the King at *Weſtminſter*, by *Edmund Barker* his Attorney, and then brought there into the Court of our ſaid Sovereign Lord the King, a certain Bill againſt *John Moore*, Eſq; and *Ruth* his Wife, *Samuel Bright*, *Jeremiah Lebley*, *Henry Smith*, and *Peter Blakey*, being in the Cuſtody of the Marſhal, *and ſo forth*, of a Plea of *Treſpaſs on the Caſe*; and there are Pledges of proſecuting, (that is to ſay) *John Doe*, and *Richard Roe*; which ſaid Bill follows in theſe Words, (that is to ſay) *Yorkſhire.* ſſ. *Henry Iveſon* complains of *John Moore*, Eſq; and *Ruth* his Wife, *Samuel Bright*, *Jeremiah Lebley*, *Henry Smith*, and *Peter Blakey*, being in the Cuſtody of the Marſhal of the *Marſhalſea* of our Sovereign Lord the King, before the King himſelf, for that whereas the ſaid *Henry Iveſon*, on the 14th Day of *May*, in the ninth Year of the Reign of our ſaid Sovereign Lord *William* the Third, was, and long before had, and ever ſince hath been, and now is poſſeſſed of a certain Term of Years then to come, and yet unexpired, of and in a certain Colliery, or Mine of Coals, being under the Soil and Earth, and in the inteſtine Parts of a certain Cloſe or Parcel of Land, lying and being in the Pariſh of *Whit-kirk* al' *Whitchurch*, in the County aforeſaid, commonly called *Whit-kirk*, otherwiſe *Whitchurch Fields*, and next adjoining to a common Highway in the Pariſh aforeſaid, on the North-ſide, leading from the Town of *Wetherby* in the ſaid County, in, by and through a certain Moor, called *Win-moor*, and from thence in, by and through a certain Lane, called *Anliſhaw-Lane*, and from thence in, by and through the Village of *Whit-kirk*, otherwiſe *Whitchurch* aforeſaid, and ſo back again; and of and in a certain Mine of Coals, being under the Soil or Earth, and in the inteſtine Parts of a certain Cloſe, Moor, or Parcel of Land in the Pariſh aforeſaid, called *Halton Moor*, ſituate, lying and being, and alſo near adjoining to the ſaid common Highway, leading on the North-ſide from the Town of *Wetherby* aforeſaid, in, by and through the ſaid Moor, called *Win-moor*, and from thence, in, by and through a Lane, called *Anliſhaw-Lane*, and from thence in, by and through a Village called *Halton* in the County aforeſaid, and ſo back again; in, by and through which ſaid Lane, called *Anliſhaw-Lane*, the Coals got and dug out of the ſaid Mine, have been uſed, and were then intended to have been carried and conveyed away from the Cloſe aforeſaid, to neighbouring and adjacent Places, and where they uſed to be ſold: And whereas on the ſame 14th Day of *May*, he the ſaid *H. Iveſon* had two hundred Load of Coals dug out of the ſaid Mine, ready to be expoſed to Sale in the ſaid ſeveral Cloſes; the ſaid *J. R. S. J. H. S.* and *P.* (not being ignorant of the Premiſſes, but contriving and fraudulently and maliciouſly intending to hinder the ſaid *Henry* from the Uſe and Benefit of his ſaid Coals, and to alienate and ſe-

2 Salk. 718.

Declaration ſetting forth that the Plt. was poſſeſſed of a Colliery for a certain Term of Years, that the ſame was joining to the High-way leading through a Lane, called Anliſhaw-Lane,

thro' which Lane the Coals uſed to be carried.

That the Defendant intending to injure the Plt. blocked up the Lane with Stones and Roots of Trees.

duce the Buyers of Coals from buying the ſame, in order to gain and procure ſuch Traders in Coals to buy Coals of the ſaid *John Moore*, which he had and was poſſeſſed of near to the ſaid Pariſh) afterwards, (that is to ſay) on the 14th Day of *May*, in the ſaid ninth Year of the Reign of his ſaid preſent Majeſty, put and placed four Loads of great Stones, and the Root of a Beechen Tree in the ſaid Way, in the ſaid Lane, in the Pariſh aforeſaid: And the ſame Stones, and the Root of a Beechen Tree, as aforeſaid, ſo put and placed, were by them permitted, and cauſed to remain there for the Space of a Month; by reaſon of which Stones, and the Root of a Beechen Tree ſo lying and being there, the ſaid Way in and through the ſaid Lane was ſo blocked up and obſtructed, that the Carts and Carriages for carrying the ſaid Coals, got and dug from the Colliery or Mine aforeſaid, could not paſs in, by and through the ſaid Way, in the Lane aforeſaid; by which the ſaid *Henry*, during the Time aforeſaid, loſt all Benefit, Profit and Advantage of his ſaid Coals; and the Coals got and dug out of the ſaid Colliery, by reaſon of their being ſo obſtructed from being carried away, were greatly damnifyed, and brought at length to be of little or no Value, to the Damage of the ſaid *Henry* fifty Pounds; and therefore he brings this Suit, *and ſo forth.*

Barber againſt **Fox.**

2 Saund. 134.
1 Vent. 189.
2 Keb. 811.
1 Sid. 31, 248.
1 Lev. 165.
1 Keb. 890.
1 Roll's Abr. 128.
Co. Lit. 209.
Palmer 171.
Farſley 13.
1 Salk. 23, 25.
Hob. 4, 5.
1 Sid 67.
Mo. 845.
3 Cro. 126.
1 Leon. 114.
1 Saund. 49.
3 Leon. 67. 68.
4 Leon. 6.
1 Sid. 337, 242.
Ray. 32.
Hard. 73.
1 Lev. 222.
2 Roll's Rep. 435.

A Declaration upon a Promiſe in Conſideration the Plt. would not ſue for a Debt.

Yorkſhire. Stephen Barber complains of *Humphrey Fox*, being in the Cuſtody of the Marſhal of the *Marſhalſey*, of our Sovereign Lord the King before the King himſelf; for that whereas one *Anthony Fox*, Father to the ſaid *Humphrey*, late of *Thorpe*, in the Pariſh of *Hatherſidge*, in the County of *Derby*, in his Life-time, (that is to ſay) on the ſeventeenth Day of *February*, in the Year of our Lord one thouſand ſix hundred and fifty-four, by his certain Bond, ſealed with the Seal of the ſaid *Anthony*, bearing Date the ſame Day and Year, acknowledged himſelf to be held, and firmly bound to the ſaid *Stephen* in the Sum of ninety-two Pounds, twelve Shillings, of lawful Money of *England*, with a Condition thereto ſubſcribed; That if the ſaid *Anthony*, his Heirs, Executors, or Adminiſtrators, or either of them, ſhould pay to the ſaid *Stephen*, the full and juſt Sum of fifty-one Pounds, and ſixteen Shillings, of like lawful Money of *England*, at or upon the eighteenth Day of *February*, which ſhould be in the Year of our Lord one thouſand ſix hundred and fifty-ſix, at or within the then dwelling Houſe of the ſaid *Stephen Barber*, ſituate in *Uxhill* in the ſaid County of *York*, without Fraud or further Delay, then the ſaid Bond ſhould be void, and of none Effect, otherwiſe ſhould be and remain in full Force and Virtue; which ſaid fifty-one Pounds ſixteen Shillings, the ſaid *Anthony* in his Life-time, or the ſaid *Humphrey* after his Deceaſe, (which ſaid *Humphrey* is Son and Heir to the ſaid *Anthony*) have not, nor either of them hath paid to the ſaid *Stephen*, upon the ſaid 18th Day of *February*, 1656, at the ſaid dwelling Houſe of the ſaid *Stephen*, according to the Form and Effect of the ſaid Condition, by which the ſaid Bond became forfeited. And afterwards (that is to ſay) on the firſt Day of *January*, in the 20th Year of the Reign of his ſaid preſent Majeſty, he the ſaid *Stephen* intended to implead and proſecute the ſaid *Humphrey*, as Son and Heir to the ſaid *Anthony* his Father, upon the ſaid Bond forfeited in Manner as above; of which ſaid Intention, the ſaid *Humphrey* having Notice, he the ſaid *Humphrey*, the Day and Year laſt above mentioned, at *Rotheram*, in the ſaid County, in Conſideration that the ſaid *Stephen*, then and there, at the ſpecial Inſtance and Requeſt of the ſaid *Humphrey*, would from thence forbear to proſecute his ſaid Suit upon the ſaid Bond againſt him the ſaid *Humphrey*, as Son and Heir to him the ſaid *Anthony*, the ſaid *Humphrey* then and there undertook, and faithfully promiſed the ſaid *Stephen*, that he the ſaid *Humphry* would well and truly content and pay to the ſaid *Stephen*, the ſaid fifty-one Pounds ſixteen Shillings, when ever he ſhould be thereto required. And the ſaid *Stephen* in Fact ſaith, that he truſting to the Promiſe and Undertaking of the ſaid *Humphrey*, did from thence forbear his ſaid Suit, intended to be proſecuted by him the ſaid *Stephen*, againſt the ſaid *Humphrey*, as Son and Heir of the ſaid *Anthony* his Father, upon the ſaid Bond. Nevertheleſs the ſaid *Humphrey*, not regarding his ſaid Promiſe and Undertaking, but contriving and fraudulently intending, craftily and ſubtilly to deceive and defraud the ſaid *Stephen* in this Particular, hath not yet paid to the ſaid *Stephen*, the ſaid fifty-one Pounds ſixteen Shillings, according to his ſaid Promiſe and Undertaking, nor in any wiſe made him Satiſfaction for the ſame, although the ſaid *Humphrey* afterwards, (that is to ſay) on the 10th Day of *February*, in the ſaid twenty-ſecond Year of his ſaid preſent Majeſty, was by the ſaid *Stephen* thereto requeſted, but hath altogether hitherto, and ſtill doth refuſe to pay or ſatisfie him for the ſame, to the Damage of the ſaid *Stephen* 100 *l.* and therefore he brings this Suit.

The Reſolution of the Caſe upon this Entry.

After a Verdict, it was moved in an Arreſt of Judgment that here was no Conſideration; for it did not appear that the Defendant was ſuable upon that Bond, as Son and Heir; for he ought to have ſhewn, that the Anceſtor did bind himſelf and his Heirs. And if the Heir is not expreſly bound by Name, he is not bound at all; and to warrant this Reſolution, the following Caſes are in the Books. *Pal.* 160. 1 *Sid.* 31, 67. *Moor* 845. *Hob.* 4, 5. 3 *Cro.* 126. 1 *Leon.* 114. 1 *Sand.* 49. 3 *Leo.* 67. 4 *Leo* 6. 1 *Vent.* 189. 1 *Sid.* 337. 242. *Ray.* 32. *Hard.* 73. 1 *Lev.* 222.

Caſe for Dilapidations by the Rector againſt the Executor of his Predeceſſor. Lilly 68.

Cheſhire. *Henry Moor* Clerk, Doctor of Laws, Rector of the Moiety of the Pariſh Church of *Malpas* in the County of *Cheſter*, complains of *John Plumley*, (Executor of the laſt Will and Teſtament of *Thomas Sands* Clerk, late Rector of the ſaid Moiety of the ſaid Pariſh Church) in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, before the King himſelf; for that whereas according to the Laws and Cuſtoms of this Kingdom of *Great Britain*, hitherto uſed and approved of, all and all manner of Prebends, Rectors and Vicars, within this Kingdom of *Great Britain*, for the Time being, have been obliged, and of Right ought to repair and uphold all and every of their Houſes, Prebendaries, Rectories and Vicarages, and leave them ſo repaired and upheld to their Succeſſors; and if ſuch Prebends, Rectors and Vicars, ſhould not leave them ſo repaired and upheld, as aforeſaid, to their Succeſſors, but leave them unrepaired, and with Dilapidations, the Executors of ſuch

Prebends, Rectors and Vicars after their Deceaſe, have always been obliged, and of Right ought to pay and ſatisfy, out of the Goods and Chattles of their Teſtators, to the Succeſſors of ſuch Prebends, Rectors and Vicars reſpectively, all ſuch Sums of Money as are ſufficient to be expended and laid out for the neceſſary Repairing and Rebuilding of ſuch Houſes or Buildings. And whereas the ſaid *Thomas Sands*, late Rector, as aforeſaid, of the ſaid Moiety of the ſaid Pariſh Church, in Right of his Rectory, was ſeiſed of and in a dwelling Houſe, with its Appurtenances in *Malpas* aforeſaid, in the ſaid County of *Cheſter*, and of and in the North-ſide of the Chancel of the ſaid Church, the ſaid *Thomas Sands*, Rector, as aforeſaid, of the ſaid Moiety of the ſaid Church, in Manner aforeſaid, on the twelfth Day of *Auguſt*, in the twelfth Year of the Reign of our Sovereign Lady *Anne*, Queen of *Great Britain*, *and ſo forth*, died at *Malpas* aforeſaid: And the ſaid *Henry Moor* afterwards, (that is to ſay) on the fifteenth Day of *December*, then next following, was preſented, admitted, inſtituted and inducted, into the ſaid Moiety of the ſaid Pariſh Church, vacant by the Death of the ſaid *Thomas Sands*, and became, and now is Rector of the ſame. And the ſaid *Henry* in Fact ſaith, that at the Time of the Death of the ſaid *Thomas Sands*, the ſaid dwelling Houſe, with its Appurtenances, and the ſaid North-ſide of the ſaid Church, were out of Repair, and with Dilapidations; and that ſuch Sums of Money as were laid out and expended about the neceſſary Repairing the ſaid Premiſſes, amounted to the Sum of ſixty-nine Pounds ſeven Shillings of lawful Money of *Great Britain*. Nevertheleſs the ſaid *John Plumley*, after the Deceaſe of the ſaid *Thomas*, although often requeſted, hath not paid or ſatisfied to the ſaid *Henry* the ſaid Sum of Money, or any Part thereof, for the neceſſary Repairs of the ſaid Premiſſes ſo as aforeſaid out of Repair, and with Dilapidations, but altogether hath, and ſtill doth refuſe to pay, or ſatiſfie him for the ſame, to the Damage of the ſaid *Henry* one hundred Pounds; and therefore he brings this Suit, *and ſo forth*.

Benſon againſt **Welby**, the late Sheriff of *Lincoln*.

Trinity, the Twenty-firſt of *Charles* the Second. *Roll* 1505.

2 Saund. 150.
An Action upon the Caſe brought by the Plt. againſt the then late Sheriff of Lincoln, for an Eſcape upon Meſne Proceſs, and falſly returning, that he had taken him, and had his Body ready, &c.
That J. W. was indebted to the Plaintiff by Bond.

Yorkſhire. Be it remember'd, that heretofore in *Eaſter* Term laſt paſt, came before our Sovereign Lord the King at *Weſtminſter Chriſtopher Benſon*, by *John Stone* his Attorney, and then produced there in Court before our ſaid Sovereign Lord the King, his certain Bill againſt *William Welby*, Eſq; late Sheriff of *Lincoln*, in Cuſtody of the Marſhal, *and ſo forth*, of a Plea of Treſpaſs upon the Caſe. And there are Pledges for the Proſecution, (that is to ſay) *John Doe* and *Richard Roe*, which ſaid Bill follows in theſe Words, (that is to ſay) *Yorkſhire*. *Chriſtopher Benſon* complains of *William Welby*, Eſq; late Sheriff of *Lincoln*, in Cuſtody of the Marſhal of the *Marſhalſey* of our ſaid Sovereign Lord the King, before the King himſelf; for that whereas one *John Wright*, heretofore, (that is to ſay) on the firſt Day of *Auguſt* 1677, at the City of *York* in the ſaid County, by his Bill Obligatory, ſealed with his Seal, bearing Date the ſame Day and Year, acknowledged himſelf to owe and be indebted to the ſaid *Chriſtopher*, in the juſt

Sum of 166 *l.* of lawful Money of *England*, which he undertook, and promiſed to pay to the ſaid *Chriſtopher*, at or upon the ſecond Day of *February*, next following the Date of the ſaid Bill, and thererby he obliged himſelf, his Heirs, Executors and Adminiſtrators, in the Sum of 332 *l.* of like Money, firmly by the ſame Bill, to the due Payment of the ſaid 165 *l.* which ſaid 166 *l.* at and upon the ſaid ſecond Day of *February*, the ſaid *John* did not pay to the ſaid *Chriſtopher*, according to the Form and Effect of the ſaid Bill; by Virtue of which ſaid Bill, the ſaid 332 *l.* became forfeited to the ſaid *Chriſtopher:* And whereas alſo the ſaid *John*, being indebted to the ſaid *Chriſtopher* in the ſaid Sum of 332 *l.* he the ſaid *Chriſtopher* afterwards, (that is to ſay) in *Trinity* Term, in the 20th Year of the Reign of our Sovereign Lord King *Charles* the Second, now King of *England*, *and ſo forth*, for the Recovery of the ſaid 332 *l.* proſecuted out of his ſaid Majeſty's Court, held before the King himſelf at *Weſtminſter*, (commonly called the King's Bench,) in the County of *Middleſex*, a certain Writ of our ſaid Sovereign Lord the King, againſt the ſaid *John*, directed to the ſaid Sheriff of *Lincoln*, by which ſaid Writ, his ſaid Majeſty Commanded the ſaid Sheriff of *Lincoln*, that he ſhould have taken the ſaid *John*, if he could have been found in his Baliwick, and have ſafely kept him, ſo that he had his Body before his ſaid Majeſty at *Weſtminſter*, on *Friday* next after three Weeks from the Feaſt of St. *Michael* then next following, to anſwer to the ſaid *Chriſtopher* in a Plea of Treſpaſs, and alſo to a Bill of the ſaid *Chriſtopher* exhibited againſt him the ſaid *John*, according to the Cuſtom of the Court of our ſaid Sovereign Lord the King, before the King himſelf, for the ſaid Debt of 332 *l.* and that the ſaid Sheriff ſhould have there at the ſame Time that Writ, which ſaid Writ the ſaid *Chriſtopher* afterwards, and before the Return of the ſaid Writ, (that is to ſay) on the laſt Day of *Auguſt* in the 20th Year aboveſaid, at the Caſtle of *Lincoln* in the ſaid County of *Lincoln*, was delivered to the ſaid *William*, then Sheriff of the ſaid County of *Lincoln*, to be executed in due Form of Law, and with an Intention, that the ſaid Sheriff, by Virtue thereof, ſhould take and arreſt, and at the Day of the Return thereof, have the ſaid *John* in the ſaid Court of our ſaid Sovereign Lord the King, before the King himſelf, there to be committed to the Cuſtody of the Marſhal of the *Marſhalſey*, of our ſaid Sovereign Lord the King, before the King himſelf, according to the Cuſtom of the ſaid Court, Time out of Mind uſed and approved of, or otherwiſe ſhould put in ſufficient Bail in the ſame Court of our ſaid Sovereign Lord the King, before the King himſelf, according to the Cuſtom of the ſaid Court, for the whole Time aboveſaid, uſed and approved of, to anſwer to the ſaid *Chriſtopher* of the Plea, and Bill aforeſaid. And the ſaid *Chriſtopher* in Fact ſays, that after the Delivery of the ſaid Writ in Form aforeſaid, and before the Day of the Return thereof, (that is to ſay) on the 20th Day of *October*, in the ſaid 20th Year at the Caſtle of *Lincoln* aforeſaid, the ſaid *William* then being Sheriff, as aforeſaid, of the ſaid County of *Lincoln*, by Virtue of the ſaid Writ, at the Suit of the ſaid *Chriſtopher*, took and arreſted the ſaid *John*, and then and there had him under the Cuſtody of him the ſaid Sheriff, by Virtue of the ſaid Writ; and the ſaid *John* being ſo in his Cuſtody, was brought to *Rippon* in the County of *York:* Nevertheleſs the ſaid *William* being then Sheriff of the ſaid County of *Lincoln*,

The Plaintiff ſued out a Writ for the Recovery of his ſaid Debt,

directed to the Sheriff of Lincoln.

The Tenor of the Writ.

That the Defendant arreſted the ſaid Wright,

and permitted him to eſcape.

And returned falſly that that he had him ready, &c.

1 Mod. 33, 57, 240, 244. 1 Syd. 439. 1 Vent. 55, 85. 2 Keble 591, 626, 630, 657, 670. 1 Danv. 181. 2 Sand. 59, 60.

maliciouſly intending totally to deprive the ſaid *Chriſtopher* of the ſaid 332 *l.* and of his Remedy for the Recovery thereof; afterwards, (that is to ſay) on the ſaid 20th Day of *October*, in the ſaid 20th Year at *Rippon* aforeſaid, (the ſaid *John* ſo being in the Cuſtody of the ſaid *William*, then Sheriff of the ſaid County of *Lincoln*,) ſuffered him to eſcape, and go at large whither he would; (the ſaid *Chriſtopher* not having had any Satisfaction for the ſaid 332 *l.* or any Part thereof; and on the ſaid *Friday* next after the three Weeks of St. *Michael*, before our ſaid Sovereign Lord the King at *Weſtminſter*, falſly returned, that he had taken the Body of the ſaid *John*, which ſaid Body he had ready to be before his ſaid Majeſty, at the Day and Place contained in the ſaid Writ, as by the ſaid Writ he had been Commanded. Whereas in Truth, the ſaid *William*, then Sheriff of the ſaid County of *Lincoln*, had not the Body of the ſaid *John* before his ſaid Majeſty, at the Day and Place in the ſaid Writ contained, by which the ſaid *Chriſtopher* is totally defrauded of the ſaid 332 *l.* and of the proper Remedy of recovering the ſame. Wherefore the ſaid *Chriſtopher* ſays, he is thereby injured and endamaged, to the Value of 400 *l.* wherefore he brings this Suit, *and ſo forth.*

This was held in 2 *Saund.* 154. to be a good Declaration, but it was doubted whether it was properly a Declaration for a falſe Return, or for an Eſcape.

An Action brought againſt the Defendant for reſcuing one that was arreſted at the Planitiff's Suit.

A. B. late of *Queenhithe London*, Meal-Factor, was attached to anſwer *J. M.* in a Plea of Treſpaſs upon the Caſe, *and ſo forth*; and whereupon the ſaid *A. B.* by *John Cock* his Attorney complains, that whereas one *R. B.* on the firſt Day of *October*, in the fifth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, *and ſo forth*, at *London* aforeſaid, in the Pariſh of St. *Mary Bow*, in the Ward of *Cheap*, was indebted to the ſaid *J. M.* in the Sum of fifty Pounds of lawful Money of *Great Britain*, for divers Wares and Merchandizes, ſold and delivered by the ſaid *J. M.* to the ſaid *A. B.* before that Time, at his Inſtance and Requeſt. And whereas the ſaid *A. B.* in *Michaelmas* Term, in the fifth Year of the Reign of our ſaid Sovereign Lord the King at *London* aforeſaid, in the ſaid Pariſh and Ward, proſecuted out of his ſaid Majeſty's Court, held before the King himſelf, his ſaid Majeſty's Writ of *Latitat*, againſt the ſaid *A. B.* directed to the then Sheriffs of *London*, returnable before our ſaid Sovereign Lord the King, on *Saturday* next after the Octave of St. *Hill.* then next following, with an Intent that afterwards, and before the Return of the ſaid Writ, by Virtue of the ſame, the ſaid Sheriffs of *London* ſhould have arreſted the ſaid *A. B.* and him ſo arreſted have conducted into the ſaid Court; that the ſaid *A. B.* might by the ſaid Court, be delivered upon Bail, or otherwiſe have been committed to the Cuſtody of the Marſhal of this Court; that the ſame *J. M.* might have exhibited his Bill of Debt againſt the ſaid *A. B.* for the ſaid fifty Pounds, at the ſaid *Saturday* next after the ſaid Octave of St. *Hill.* by Virtue of which ſaid Writ, *Samuel Ruſſell*, Eſq; and *Thomas Pinder*, Eſq; then and now Sheriffs of *London* aforeſaid, at *London* aforeſaid, in the ſaid Pariſh and Ward, afterwards, and before the Return of the ſaid Writ, (that is to ſay) on the 10th Day of *December*, in the ſaid fifth Year by their Warrant in Writing directed to their Serjeants at Mace, thereby commanding them, or any of them, that they ſhould take the ſaid *R. B.* ſo as the ſaid Sheriffs of *London* might have his Body before the ſaid Lord the King, on the ſaid *Saturday* next after the ſaid Octave of St. *Hill.* to anſwer to the ſaid *J. M.* in the ſaid Plea of Treſpaſs upon the Caſe, according to the Form and Effect of the ſaid Writ; by Virtue of which Warrant, *Ch. Hobſon*, one of the Serjeants at Mace to the ſaid Sheriffs, afterwards, and before the Return of the ſaid Writ, (to wit) on the ſaid 10th Day of *December* in the Year aforeſaid, took and arreſted the Body of the ſaid *R. B.* and him ſo arreſted, then and there had in his Cuſtody, and the ſaid *A.* (knowing the ſaid *R.* to be arreſted by the ſaid Sheriffs of *London*, for the Cauſe aforeſaid,) craftily and fraudulently contriving and intending to deceive and defraud the ſaid *J. M.* of the ſaid fifty Pounds, the ſaid *A.* afterwards, (that is to ſay) on the ſame 10th Day of *December* in the ſaid Year in *London* aforeſaid, in the ſaid Pariſh and Ward, with Force and Arms, made an Aſſault upon the ſaid *Ch. Hobſon*, and took, and reſcued the ſaid *R. B.* out of the Cuſtody of the ſaid *Ch. Hobſon*, and conveyed him away to Places altogether unknown to the ſaid *Ch. Hobſon*; by which the ſaid *J. M.* not only ſuſtained, expended and underwent divers Labours, Journies and Expences, in complaining againſt, and proſecuting the ſaid *R.* in Order to have a Satisfaction for his ſaid Debt; but alſo the ſaid *J. M.* totally loſt his ſaid Debt, by reaſon of the ſaid Reſcue committed and done by the ſaid *A. B.* and conveying the ſaid *R. B.* to Places unknown to the ſaid *Ch. Hobſon*, as above, to the Damage of the ſaid *J. M.* one hundred Pounds, and therefore the ſaid *J. M.* brings his Suit, *and ſo forth.*

An Iſſue out of Chancery.

Collins againſt **Ford.**

London. *Thomas Collins* complains of *John Ford*, in the Cuſtody of the Marſhal of the *Marſhalſey*, of our Sovereign Lord the King, before the King himſelf; for that whereas on the firſt Day of *May*, in the fifth Year of the Reign of his preſent Majeſty *George* the Second, King of *Great Britain*, *and ſo forth*, at *London* aforeſaid, (that is to ſay) in the Pariſh of St. *Mary Bow*, in the Ward of *Cheap*, a certain Diſcourſe aroſe, and was had between the ſaid *Thomas* and *John*, of and concerning the Partnerſhip, or the Joint Trade of a Bookſeller, that had been carried on between the ſaid *Thomas* and the ſaid *John*, and of and concerning certain Exceptions that had been taken in a certain Suit or Complaint, before that Time levied and proſecuted in the High Court of Chancery, between the ſaid *Thomas* and the ſaid *John*, and of and concerning divers Sums of Money in the Whole amounting to one hundred and twenty-eight Pounds ten Shillings of lawful Money of this Kingdom of *Great Britain*, in the Third of the ſaid Excptions mentioned; upon which Diſcourſe, ſo as aforeſaid had and riſen, there was then and there a Diſpute between the ſaid *Thomas* and the ſaid *John*, whether the ſaid Sum of one hundred and twenty-eight Pounds ten Shillings, or any Part thereof, had been received by the ſaid *John* to his own Uſe,

Lilly 66. **A Declaration in Order to try a feigned Iſſue whether the Defendant had received 128 l. 10 s. out of the ſaid Partnerſhip.**

out of the Partnerſhip Stock, or no; and thereupon the ſaid *John* afterwads, (that is to ſay) the ſame Day and Year at *London* aforeſaid, in the ſaid Pariſh and Ward, in Conſideration, that the ſaid *Thomas*, at the ſpecial Inſtance and Requeſt of the ſaid *John*, then and there had paid to the ſaid *John* five Shillings of lawful Money of *Great Britain*, undertook, and then and there faithfully promiſed the ſaid *Thomas*, that he the ſaid *John* would pay to the ſaid *Thomas* forty Shillings of like lawful Money, if the ſaid Sum of one hundred twenty-eight Pounds and ten Shillings, or any Part thereof, had been taken and received by the ſaid *John* to his own Uſe, out of and from the Partnerſhip Stock. And the ſaid *Thomas* in Fact ſaith, that the ſaid Sum of one hundred twenty-eight Pounds and ten Shillings, was taken by the ſaid *John* to his own Uſe out of the Partnerſhip Stock. Nevertheleſs the ſaid *John*, not regarding his Promiſe and Undertaking made as above, but contriving, and fraudulently intending, craftily and ſubtilly to deceive and defraud the ſaid *Thomas* in this Particular, hath not paid to the ſaid *Thomas* the ſaid forty Shillings, nor any ways given him Satisfaction for the ſame, although the ſaid *John*, afterwards, (that is to ſay) the ſecond Day of *May*, in the fifth Year aforeſaid, at *London* aforeſaid, in the ſaid Pariſh and Ward, was requeſted thereto by the ſaid *Thomas*. But the ſaid *John* hath altogether hitherto refuſed to pay to the ſaid *Thomas* the ſaid forty Shillings, or to make him any Satisfaction for the ſame, whereby the ſaid *Thomas* ſaith he is injured and endamaged to the Value of five Pounds; and therefore he brings this Suit, *and ſo forth.*

Declaration in Caſe by way of Deceit in a Bargain.

A. B. complains of *C. D.* being in the Cuſtody of the Marſhal of the *Marſhalſey*, of our Sovereign Lord the King, before the King himſelf; for that whereas the ſaid *C. ſuch a Day, Year and Place*, had covenanted and bargained with the ſaid *A.* to make and burn for him the ſaid *A.* in a workman-like Manner, eighty thouſand Bricks, for a certain Sum of Money, (that is to ſay) for twenty Pounds in Hand paid, and the reſt to be paid when the ſaid Bricks ſhould be ſo made and burnt; and the ſaid *C.* then and there promiſed and undertook to make and burn the ſaid eighty thouſand Bricks in a good and workman-like Manner, and to cauſe the ſame to be delivered to the ſaid *A.* on or before (*ſuch a Day, at ſuch a Place*) yet the ſaid *C.* not regarding his ſaid Promiſe and Undertaking, but contriving craftily and ſubtilly to deceive and defraud the ſaid *A.* ſo negligently and improvidently made and burnt ſixty thouſand of the ſaid Bricks, and on (*ſuch a Day, and at ſuch a Place*) cauſed the ſame to be delivered to the ſaid *A.* in ſo bad and unworkman-like Manner, that the ſaid ſixty thouſand Bricks, for want of due making and burning of the ſame, could in no Manner be ſerviceable to the ſaid *A.* for the Work and Buſineſs they were to be employed about; by which the ſaid Buſineſs and Work of the ſaid *A.* is much damnified; whereupon he ſaith, that he is thereby injured and endamaged to the Value of forty Pounds; and thereupon he brings this Suit, *and ſo forth.*

For taking away a Gelding of the Plaintiff.

Norfolk. A. B. of *T.* in the ſaid County, was attached to anſwer to *C. D.* of a Plea wherefore the ſaid *A.* with Force and Arms at *T.* aforeſaid, took away and rode a certain Gelding of the ſaid *C.* there found in ſuch a Manner, that the ſaid Gelding, by means of ſuch riding thereof, was much damnified, and committed other Injuries againſt the ſaid *C.* to his great Damage, and againſt the Peace of our Sovereign Lord the King that now is; and whereupon the ſaid *C.* by *J. C.* his Attorney complains, that the ſaid *A.* on the twenty-third Day of *December*, in the tenth Year of the Reign of his ſaid preſent Majeſty, with Force and Arms, took and rode away a Gelding of the ſaid *C.* in ſuch a Manner at *Thetford*, in the ſaid County, that the ſaid Gelding, by means of the ſaid *A.*'s taking and riding the ſame, was much damnified, and committed other Injuries againſt the ſaid *C.* to his great Damage, and againſt the Peace of our ſaid Sovereign Lord the King; and whereupon the ſaid *C.* ſaith, that he is injured and endamaged to the Value of ten pounds; and therefore he brings this Suit, *and ſo forth.*

A Declaration for ſelling a Gelding to the Plaintiff, knowing it to be the Property of another.

Suffolk. *A. B.* late of St. *Edmond*'s *Bury*, in the ſaid County of *Suffolk*, Apothecary, was attach'd to anſwer *C. D.* of a Plea of Treſpaſs on the Caſe; and whereupon the ſaid *C.* by *Thomas Evans* his Attorney complains, that whereas (*ſuch a Day and Year*) at St. *Edmond*'s *Bury* aforeſaid, a certain Diſcourſe aroſe between the ſaid *C.* and the ſaid *A.* about a certain Gelding he bought of the ſaid *A.* which the ſaid *A.* affirmed to the ſaid *C.* was the Property of him the ſaid *A.* By Reaſon of which Affirmation the ſaid *C.* was induced to, and did then and there buy the ſaid Gelding of the ſaid *A.* for ten Pounds, and then and there paid the ſaid *C.* the ſaid ten Pounds for the ſame. And the ſaid *C.* in Fact ſays, that the ſaid Gelding, at the Time of the ſaid Affirmation, and the ſaid *C.*'s Buying the ſame, was not the proper Gelding of the ſaid *A.* but the ſaid Gelding at the Time of ſuch Affirmation and Sale thereof to the ſaid *C.* was the proper Gelding of one *D.* and of Right did belong and appertain to the ſaid *D.* And he the ſaid *D.* afterwards, (that is to ſay) (*ſuch a Day and Year*) at St. *Edmond*'s *Bury* aforeſaid, took and led away the ſaid Gelding out of and from the Hands and Poſſeſſion of him the ſaid *C.* as the proper Gelding of the ſaid *D.* whereby the ſaid *C.* ſays he is injured, not only by having the ſaid Gelding taken from him by the ſaid *D.* as his own Property, but alſo he the ſaid *C.* was obliged and conſtrained to pay, and expend divers Sums of Money, in the Whole amounting to twelve Pounds for the Redemption of the ſaid Gelding, to the Damage of the ſaid *C.* twenty Pounds; and therefore he brings this Suit, *and ſo forth.*

An Action upon the Caſe for diverting a Water-courſe.

Southampton. ——— *John Hobbard*, late of *Ovington*, in the County aforeſaid, Labourer, *Jonathan Bignell*, late of the ſame, Labourer, were attached to anſwer to *Anne Talden*, of a Plea of Treſpaſs on the Caſe; and whereupon the ſame *Anne*, by *John Beale* her Attorney complains, that the ſaid *Anne* on the firſt Day of *January*, in the firſt Year of the Reign of our Sovereign Lord the now King; and for three Years then laſt paſt, was, and now is lawfully poſſeſs'd of, and in an ancient Meſſuage, and five Acres of Meadow called the upper Meadow, with the Appurtenances in *Lewingdon*, in the Pariſh of *Caſton*, in the County aforeſaid, which ſaid Meadow lieth on the Eaſt-ſide of the Meſſuage aforeſaid; on the North-ſide contiguouſly adjoining to a certain ancient Water-courſe, called *Ovington* Water-courſe, which now runs, and Time out of Mind hath runned, and uſed, and of Right ought to run from a certain River called *Itchin* River, in the Pariſh of *Itchin-Stoake*, in the County aforeſaid, to *Ovington* aforeſaid, in the County aforeſaid; and from *Ovington* aforeſaid, to, in, by and through the ſaid Meadow, called the upper Meadow, and from thence quite up to, by, thro' and beyond the ſaid Meſſuage, into a certain Rivulet in *Lewington* aforeſaid, in the ſaid County, called *Lewington* River. Notwithſtanding which, the ſaid *John* and *Jonathan*, not being ignorant of the Premiſſes, but contriving, and maliciouſly intending totally to fruſtrate and hinder the ſame *Anne*, from the Uſe and Benefit of the Water-courſe aforeſaid, on the 18th Day of *March*, in the Year 1718, at *Ovington* aforeſaid, in the County aforeſaid, dug, broke up, and caſt a certain Bank, on the North-ſide of the ſaid Water-courſe, and thereby diverted that ſaid Water-courſe, from the Water-courſe of the ſaid *Anne*; by which the ſaid *Anne* was totally deprived of, and loſt the whole Uſe, Profit and Benefit of the ſaid Water-courſe for a long Time, (that is to ſay) from thence until the 18th Day of *April* next following, to the Damage of the ſaid *Anne* 20*l.* and therefore ſhe brought this Suit, *and ſo forth.*

Mingay againſt Knighton.

Trinity Term, the Sixth of King *George*.

Upon an Agreement between Leſſor and Leſſee, about laying down of Land and dreſſing it in a huſband-like Manner.

Bucks. ——— *John Mingay* complains of *William Knighton* and *Edward Smith*, in the Cuſtody of the Marſhal, *and ſo forth*, for this Cauſe, (that is to ſay) whereas the ſaid *John*, on the 20th Day of *April*, in the Year of our Lord 1720, at *Aylesbury*, in the County aforeſaid, at the Inſtance and Requeſt of the ſaid *William* and *Edward*, demiſed to the ſaid *William* and *Edward*, twenty-three Acres of Fenn or Marſh Land, with the Appurtenances in Lower *Delphs*, in the Pariſh of in the County of *Bucks* aforeſaid, now in the Poſſeſſion of the ſaid *William* and *Edward*, at and under the yearly Rent of twenty-three Pounds, for a Term of ſix Years, beginning, in, and upon the Feaſt of the Annunciation of the Bleſſed Virgin *Mary*, then laſt paſt. And the ſaid *John*, at the like Inſtance and Requeſt of the ſaid *William* and *Edward*, then, and there agreed, that the ſaid *William* and *Edward* ſhould have, and take four Crops of Grain, during the four Years then next following the ſaid 20th Day of *April* 1720, at *Aylesbury*, in the County aforeſaid, the ſaid *William* and *Edward*, in Conſideration thereof, undertook, and then and there faithfully promiſed the ſaid *John*, that they the ſaid *William* and *Edward*, at the End of the fourth Year, would lay down the ſame in a huſband-like Manner, and would ſow upon every Acre of Fenn or Marſh Land, nine Pounds of Clover-graſs Seed. And although the ſaid *John* hath performed, and fulfilled all and every Thing on his Part to be performed and fulfilled, neverthesſ the ſaid *William* and *Edward* not regarding their Promiſe and Undertaking aforeſaid, but contriving, and fraudulently intending to do Damage to the ſaid twenty-three Acres of Marſh Land, and to render the ſame of no Value, at the End of the ſaid four Years, the ſaid *William* and *Edward*, did not lay down the ſaid twenty-three Acres of Fenn or Marſh Land, according to a huſband-like Manner, nor have ſowed the ſame, or any Part thereof, with the ſaid Seed, called Clover-Seed, but after the End of the ſaid four Years, (that is to ſay) on the fifth Year next after the ſaid Agreement, tilled and plowed the ſaid twenty-three Acres of Fenn or Marſh Land, contrary to the Form and Effect of their ſaid Undertaking; wherefore the ſaid *John* ſaith that he is injured, and ſuſtains Damage to the Value of forty Pounds; and therefore brought this Suit, *and ſo forth.*

This Declaration was drawn by **Sergeant Branthwayte.**

For ſtopping up the Plaintiff's Lights.

Suffolk. ——— *J. M.* complains of *S. B.* in the Cuſtody of the Marſhal of the *Marſhalſey*, *and ſo forth*, for that whereas the ſame *J.* on the twenty-firſt Day of *March*, in the Year of our Lord 1730, was, and always afterwards hitherto hath been, and yet is poſſeſſed of and in an ancient Meſſuage, with the Appurtenances, ſituate, lying and being in the Pariſh of St. *Edmond*'s *Bury*, in the County of *Suffolk*, in which ſaid Meſſuage the ſame twenty-firſt Day of *March*, in the aforeſaid Year, Time out of Mind, there had been, and then were four ancient Windows on the North-ſide of the ſaid Meſſuage, by, and through which four Windows, the wholſome Air, and comfortable Light, on the ſame twenty-firſt Day of *March*, in the Year aforeſaid, did enter, and was brought in, and during the whole Time aforeſaid, had enter'd and uſed to be brought in, to the great Benefit and Advantage of the Inhabitants of the ſaid Meſſuage. And whereas the ſaid *S.* on the ſaid twenty-firſt Day of *March*, in the aforeſaid Year was, and always afterwards hitherto hath been, and now is poſſeſſed of a certain Parcel of Land, with the Appurtenances ſituate, lying and being in St. *Edmond*'s *Bury* aforeſaid, in the County aforeſaid, next and contiguouſly adjoining to the ſame antient Meſſuage of the ſaid *J.* and being ſo poſſeſſed, the ſaid *S.* contriving, and fraudulently intending, in a grievous Manner, to trouble the ſaid *J.* and to hinder the Air and Light from being brought, and entring into the ſaid Meſſuage of the ſaid *J.* which uſed to enter and be brought in thereto, through the ſaid Windows, and thereby procure Darkneſs thereto; on the ſaid twenty-firſt Day of *March*, in the ſaid Year, at *Bury* St. *Edmond*'s aforeſaid, in the County aforeſaid, the ſaid *S.* newly built and erected a certain new Meſſuage, upon the ſaid Parcel of Land of the ſaid *C.* ſo near the aforeſaid antient Meſſuage of the ſaid *J.* and continued the ſame until the firſt Day of *June* 1730, ſo that by Reaſon of the ſaid new Erection of the ſaid new Meſſuage of him the ſaid *C.* and continuing the ſame, the Windows aforeſaid, of the ſaid *J.* on the ſame twenty-firſt Day of *March*, in the Year aforeſaid, and always afterwards, to the firſt Day of *June*, in the Year of our Lord 1730, were very much overſhadowed and darkened, by which the ſaid *J.* from the ſaid twenty-firſt Day of *March*, in the ſaid Year of our Lord 1729. to the ſaid firſt Day of *June* 1730. at *Bury* St. *Edmond*'s aforeſaid, totally loſt, and was deprived of the whole Benefit and Advantage of the ſaid Windows, and of the Delight and Wholſomeneſs of the ſaid Air and Light, which were accuſtomed to enter, and be brought into the ſaid Meſſuage. Wherefore the ſaid *J.* ſaith, that he is injured and endamaged to the Value of one hundred Pounds; and therefore brings this Suit, *and ſo forth.*

Vide 1 *Lev.* 122, 239. 2 *Lev.* 194. 1 *Mod.* 55. 6 *Mod.* 116, 245, 314. 2 *Salk.* 459. *Ray.* 87. 1 *Sid.* 167. *Hob.* 131. *Poph.* 107. 1 *Cro.* 419. *Hut.* 136.

Treſpaſs upon the Caſe againſt an Innkeeper for ſuffering the Horſe of his Gueſt to ſtray from his Inn, by Default of him.

Eſſex. *C. N.* was attached by his Majeſty's Writ of Privilege, to anſwer to *H. D.* one of the Attornies of his ſaid Majeſty's Court of Common Bench, according to the Liberties and Privileges of the ſame Court, for Attornies of the ſaid Common Bench, Time out of Mind, uſed and approved of, of a Plea of Treſpaſs upon the Caſe, *and ſo forth*. And whereupon the ſaid *H.* in his proper Perſon complains, that whereas according to the Laws and Cuſtoms of this Realm of our Sovereign Lord *George* the Second, King of *Great Britain, and ſo forth*, the Innkeepers that keep common Inns to lodge Travellers therein, who abide in the ſame, are bound to keep their Goods and Chattles, being within thoſe Inns, Day and Night, without Diminution or Loſs, ſo that no Loſs or Damage might happen to any ſuch Traveller or Travellers, by reaſon of the Defect of ſuch due Care by ſuch Innkeepers, or their Servants in thoſe Inns. And the ſaid *H.* on the third Day of *October*, in the ſixth Year of the Reign of our Sovereign Lord the King that now is, at *W.* in the County aforeſaid, being lodged in the Inn of the ſaid *C.* had a certain Gelding of the Price of twenty Pounds within that Inn, and delivered the ſame to the ſaid *C.* then and there to be ſafely kept. Nevertheleſs the ſaid *C.* knowing the ſaid Gelding to be within his Inn, the ſaid *C.* (*the ſame Day, Year and Place*) did ſo negligently keep the ſaid Gelding, that the ſaid Gelding (for want of ſafe keeping thereof by the ſaid *C.* and his Servants) went forth and wander'd from his ſaid Inn; whereby the ſaid *H.* not only loſt the Uſe and Profit of his ſaid Gelding in going on his ſaid Journey, in doing neceſſary and important Buſineſſes, but the ſame thereby remained undone; and the ſaid *H.* expended and laid out divers Sums of Money, not only by Reaſon of the want of his ſaid Horſe; but alſo the ſaid *H.* always from the ſaid third Day of *October*, in the ſixth Year aboveſaid, loſt the Uſe and Benefit of his ſaid Gelding; and the ſaid *C.* hath not delivered to the ſaid *H.* the ſaid Gelding, although the ſaid *C.* on the twentieth Day of *October*, in the Year aforeſaid, at *W.* aforeſaid, was thereto required, but hitherto hath, and ſtill doth refuſe ſo to do, or to make him any Satisfaction for the ſame; whereby the ſaid *H.* ſaith, that he is injured and endamaged to the Value of twenty Pounds; and therefore brings this Suit, *and ſo forth*.

A Declaration againſt one for negligently keeping his Fire, whereby his Neighbour's Houſe and Goods were burnt.

Norfolk. ——— *A. B.* late of *Thetford*, in the County aforeſaid, was attached to anſwer to *R. S.* in a Plea of Treſpaſs upon the Caſe; and whereupon the ſaid *R. S.* by *Robert Martin* his Attorney complains, that whereas according to the Laws and Cuſtoms of this Kingdom uſed and approved of, every Man is bound to keep his Fire ſafely and ſecurely, leſt by the Defect of due keeping ſuch Fire, any Damage ſhould happen in any Manner howſoever to any of his Neighbours. The ſaid *A.* not being ignorant of the Premiſſes, but contriving and intending thereby to injure the ſaid *R. S.* the ſaid *A.* on the 10th Day of *April*, in the Fifth Year of the Reign of our Sovereign Lord *George* the Second, King of *Great Britain, and ſo forth*, being poſſeſs'd of a Meſſuage or Dwelling-houſe, with the Appurtenances, ſituate at *Thetford* aforeſaid, in the County aforeſaid. And the ſaid *R. S.* being likewiſe poſſeſſed of a Meſſuage or Dwelling-houſe, ſituate and being near the ſaid Houſe of the ſaid *A. B.* in *Thetford* aforeſaid, in the County aforeſaid, the ſaid *A. B.* ſo negligently and improvidently kept his Fire, in his ſaid Meſſuage or Dwelling-houſe, in which he then inhabited and dwelt, that for want of due keeping his ſaid Fire, Part of the Meſſuage or Dwelling-houſe of the ſaid *R. S.* and his Goods, (then and there being) to the Value of fifty Pounds, were then and there deſtroyed and burnt. Wherefore he ſaith that he is injured and endamaged to the Value of eight hundred Pounds; and therefore he brings this Suit, *and ſo forth.*

Pleas before our Sovereign Lord the King at Weſtminſter, *of* Eaſter *Term, in the ſeventh Year of the Reign of our Sovereign Lord* William *the Third, now King of* England, *and ſo forth.* Roll 242.

Sir **John Dalſton** againſt **Janſon.**

2 Salk. 703. **Declaration upon the Cuſtom of the Realm, againſt a common Carrier.**

London. Be it remember'd that heretofore, (that is to ſay) in the Term of St. *Hillary* laſt paſt, came Sir *John Dalſton*, Knight and Baronet, before our Sovereign Lord the King at *Weſtminſter*, by *John Prat* his Attorney, and then brought there into his ſaid Majeſty's Court his Bill againſt *Joſhua Janſon*, a common Carrier, in Cuſtody of the Marſhal, *and ſo forth*, of a Plea of Treſpaſs upon the Caſe, and there are Pledges for the Proſecution, (that is to ſay) *John Doe* and *Richard Roe*, which ſaid Bill follows in theſe Words, (that is to ſay) *London.* Sir *John Dalſton*, Knight and Baronet, complains of *Joſhua Janſon* a common Carrier, being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, before the King himſelf; for that whereas the ſaid *Joſhua* on the ſixteenth Day of *March*, in the Year of our Lord 1693. was, and long before had, and ever ſince hath been, and now is a common Carrier of Goods and Chattels, and during all that Time hath been uſed to carry for Gain and Hire, Goods and Chattels of all Perſons whatſoever, requiring him thereto, from *Wakefield* in the County of *York* to *London*, and from thence back again to *Wakefield* aforeſaid; And whereas by the Laws and Cuſtoms of this Kingdom of *England*, every common Carrier, who receives any Goods and Chattels of any Perſon, for Gain, Hire and Profit, to carry the ſame, is bound to preſerve and carry the ſame, without diminiſhing or loſing any Part thereof, ſo that no Damage whatſoever may happen thereto, by the Default of ſuch common Carrier or his Servant; And whereas the ſaid *John* on the 16th Day of *March*, in the Year of our Lord 1693. at *London* aforeſaid, in the Pariſh of St. *Mary Bow*, in the Ward of *Cheap*, was poſſeſſed of the Goods and Chattels following, (that is to ſay) of a Deal-Box, and a hundred Pieces of Gold called Guineas, of lawful Money of *England*, as of his own proper Goods and Chattels, and the ſaid *John* being ſo poſſeſſed thereof, on the ſame 16th Day of *March* in the ſame Year of our Lord 1693. he the ſaid *John* delivered to the ſaid *Joſhua*, at *London* aforeſaid, in the ſaid Pariſh and Ward, the ſaid Box, with the ſaid Pieces of coin'd Gold, then therein to carry the ſame ſafely and ſecurely from *London* aforeſaid, to *Wakefield* aforeſaid, in the ſaid County of *York*, and there to be delivered to the ſaid *John*; and the ſaid *Joſhua* then and there had and received the ſaid Box, with the ſaid Pieces of Gold, therein to be carried and delivered in the Manner as above ſet forth. Nevertheleſs the ſaid *Joſhua* hath not, at any Time afterwards to this very Time, delivered the ſaid Box, with the ſaid Pieces of Gold therein to him, the ſaid *John*, as he ought to have done; but inſtead thereof the ſaid Box, and the ſaid hundred Pieces of coin'd Gold therein, afterwards, (that is to ſay) on the 17th Day of *March*, in the ſaid Year of our Lord *1693*. were periſhed and loſt at *London* aforeſaid, in the ſaid Pariſh and Ward, for want of the due Care and Preſervation of the ſame by him the ſaid *Joſhua*, to the Damage of the ſaid *John* one hundred fifty Pounds; and therefore he brings this Suit, *and ſo forth*.

The Imparlance.

And *Note*, at this Day, (that is to ſay) on *Wedneſday* next, after fifteen Days from the Feaſt of *Eaſter*, this ſame Term (till which Day the ſaid *Joſhua* had Leave to imparl, and then to make Anſwer to the ſaid Bill) came before our Sovereign Lord the King at *Weſtminſter*, as well the ſaid Sir *John Dalſton* Knight and Baronet, by his ſaid Attorney, as the ſaid *Joſhua* by *William Midgeley* his Attorney, and the ſaid *Joſhua* defends the ſaid Force, Injury and Damages, and whatever elſe he ought to defend, when and where this Court will conſider thereof; and ſays he is in no ways guilty of the Premiſſes; and of this *he ſubmits himſelf to the Country*; and the ſaid Sir *John Dalſton thereof does likewiſe the ſame*; therefore let a Jury thereof come before our Sovereign Lord the King at *Weſtminſter*, on *Tueſday* next after a Month from the Feaſt of *Eaſter*, and who are no ways related, either to the ſaid Sir *John Dalſton*, or to the ſaid *Joſhua*, to make a Jury between the ſaid Parties of a Plea of Treſpaſs upon the Caſe, becauſe as well the ſaid *Joſhua*, as the ſaid Sir *John Dalſton*, between whom the ſaid Matter is in Variance, have thereof ſubmitted themſelves to the Jury; the ſame Day is given to the ſaid Parties, *and ſo forth*.

Not Guilty.

The Award of the Venire.

The Reſolution of the Caſe.
1 Salk. 10.

Note; *Judgment was arreſted in this Cauſe after a Verdict, becauſe the Plaintiff had declared likewiſe in Trover in the ſame Declaration; whereas a Contract and a Tort could not be join'd together, upon the Authority of the Caſe of* Matthews *and* Hopkins. 1 *Siderf.* 244.

Pleas before our Sovereign Lord the King at Weſtminſter, *on the Term of the Holy* Trinity, *in the tenth Year of the Reign of our Sovereign Lord* William *the Third, King of* England, *and ſo forth.* Roll 763.

Johnſon againſt Long.

2 Salk. 714.
A Declaration for a Nuſance.

Somerſetſhire. **Be it remember'd** that heretofore, (that is to ſay) in the Term of St. *Michael* laſt paſt, *Timothy Johnſon*, by *Philip Hodges* his Attorney, came before our Sovereign Lord the King at *Weſtminſter*,

Weſtminſter, and then brought there into his Majeſty's Court, his Bill againſt *John Long*, being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, of a Plea of Treſpaſs upon the Caſe, and there are Pledges for the Proſecution, (that is to ſay) *John Doe* and *Richard Roe*, which ſaid Bill follows in theſe Words. *Somerſetſhire. Timothy Johnſon* complains of *John Long*, being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King; for that whereas the ſaid *Timothy*, on the 21ſt Day of *April*, in the eighth Year of the Reign of his ſaid preſent Majeſty, was, and ever ſince hath been, and now is poſſeſſed of an ancient Workhouſe, ſituate and being in the Pariſh of *Whatley*, in the County aforeſaid, in which ſaid Workehouſe, on the ſaid 21ſt Day of *April*, in the eighth Year aforeſaid, there was, and during the Time that the Memory of Man hath not been to the contrary, there hath been a certain ancient Window on the Weſtern-ſide of the ſaid Workhouſe, through which the wholſome Air and pleaſant Light, on the ſaid 21ſt Day of *April*, in the eighth Year aforeſaid, did, and during the whole Time abovementioned, have been uſed to enter, and brought into the ſaid Workhouſe, to the great Advantage and Benefit of the Occupiers thereof. And whereas the ſaid *John*, on the ſaid 21ſt Day of *April*, in the eighth Year aforeſaid, was, and ever ſince hath been, and now is poſſeſſed of a certain Piece of Land, with its Appurtenances, ſituate, lying and being in the ſaid Pariſh of *Whatly*, in the County aforeſaid, contiguouſly adjoining to the ſaid Workhouſe; and being ſo thereof poſſeſſed the ſaid *John* contriving, and fraudulently intending greatly to grieve and oppreſs the ſaid *Timothy*, and in order to obſtruct the ſaid Air and Light, which uſed to enter, and be brought into the ſaid Workhouſe through the ſaid Window, from entering through the ſaid Window into the ſaid Workhouſe, and to render the ſaid Shop totally Hideous and Dark, and thereby wholly to deprive the ſaid *Timothy* of the Benefit and Advantage of his ſaid Workhouſe; he the ſaid *John* on the ſaid 21ſt Day of *April*, in the eighth Year aforeſaid, at *Whatley* aforeſaid, in the ſaid County of *Somerſet*, erected and built a Wall upon his ſaid Piece of Land ſo near the ſaid Workhouſe, as that the ſaid Window, by the Erection of the ſaid Wall, on the ſaid 21ſt Day of *April*, and ever ſince, to the Day of the ſaid *Timothy*'s Exhibiting his ſaid Bill, (that is to ſay) on the 23d Day of *October* in the ninth Year of the Reign of his ſaid preſent Majeſty, was overſhadowed and darkened, whereby the ſaid *Timothy* was totally deprived of, and loſt all the Benefit and Advantage of his ſaid Window, and the Delight and Healthfulneſs of the Air and Light, which uſed to enter, and be brought in upon his ſaid Workhouſe, through the ſaid Window, and all the Uſe and Profit of his ſaid Workhouſe, from the ſaid 21ſt Day of *April*, in the eighth Year aforeſaid, to the ſaid 23d Day of *October*, in the ſame Year; whereby the ſaid *Timothy* ſays he is injured and endamaged to the Value of forty Pounds; and therefore he brings this Suit, *and ſo forth*.

Poſſeſſion alledged in an old Workhouſe.

The Defendant's Poſſeſſion of a Piece of Land adjoining thereto.

That the Defendant obſtructed the Light whereby the Plaintiff loſt the Benefit of his Shop.

And now at this Day, (that is to ſay) on *Friday* next after the Morrow of the Holy *Trinity* this ſame Term (till which Day the ſaid *John* had Leave to impark, and then to make Anſwer to the ſaid

Imparlance.

The Defendant pleads another Recovery for the ſame Nuſance in Bar.

Setting forth a former Declaration.

Averment of Identity.

Bill) before our ſaid Sovereign Lord the King at *Weſtminſter*, as well the ſaid *Timothy* by his ſaid Attorney, as the ſaid *John* by *James Long* his Attorney, come before our Sovereign Lord the King at *Weſtminſter*, and the ſaid *John* defends the Force, Injury and Damages, and whatever elſe he ought to defend, when and where the Court will pleaſe to conſider thereof; and ſays, that the ſaid *Timothy* ought not to have, or maintain his ſaid Action againſt him, becauſe he ſays that the ſaid *Timothy* heretofore, (that is to ſay) in *Eaſter* Term, in the eighth Year of the Reign of his preſent Majeſty, in the Court of our ſaid Sovereign Lord the King, before the King himſelf at *Weſtminſter*, in the County of *Middleſex*, impleaded the ſaid *John Long* in a Plea of Treſpaſs upon the Caſe, and declared againſt him, that whereas he the ſaid *Timothy*, on the 10th Day of *October*, in the ſeventh Year of the Reign of his ſaid preſent Majeſty, then was, and ever ſince hath been, poſſeſſed of a Workhouſe, ſituate, lying and being in the Pariſh of *Whatley*, in the County aforeſaid, (*and ſo recites, that the Plaintiff declared in the ſame Manner as before, only therein mentions, that the Defendant built the Wall on the* 10th *Day of* October, *in the ſeventh Year of the Reign of his ſaid preſent Majeſty, inſtead of the Time abovementioned in this Declaration) and after the Words*, and therefore he then brought that Suit, *and ſo forth, he goes on in his Plea in the following Manner*, and ſuch was the Proceedings here in this ſame Court, (that is to ſay) at *Weſtminſter* aforeſaid; That after that the ſaid *John* had pleaded that he was not Guilty thereof, and it had been found by a certain Jury, that he had been Guilty thereof, (that is to ſay) in *Michaelmas* Term then next following; it was conſidered here by the ſame Court, that the ſaid *Timothy* ſhould recover againſt the ſaid *John* fourteen Pounds, for the Damages which he ſuſtain'd, as well by Occaſion of the Premiſſes mentioned in the ſame Record, as for his Expences and Coſts by him laid out about his Suit in that Behalf, as by the Record thereof now remaining in this Court, (that is to ſay) at *Weſtminſter*, more fully may appear. And the ſaid *John* further ſaith, that the ſaid Workhouſe Window, and the Erection, and Building the ſaid Wall, mentioned in the ſaid recited Record, and the ſaid Workhouſe Window, Erection and Building of the ſaid Wall, mentioned and expreſſed in the Bill of the ſaid *Timothy*, exhibited againſt the ſaid *John Long*, are one and the ſame, and not different; and that the ſaid *Timothy* named the Plaintiff in the ſaid recited Record, and the ſaid *John* named the Defendant in the ſaid recited Record, and the ſaid *Timothy* and *John* reſpectively named Plaintiff and Defendant in the above Bill of the ſaid *Timothy*, are the ſame, and not different Perſons; and this he is ready to verify; wherefore he prays Judgment, whether the ſaid *Timothy* ought to have and maintain his ſaid Action againſt him, *and ſo forth*.

Demurrer.

And the ſaid *Timothy* ſays, that he, notwithſtanding any thing alledged by the ſaid *John* above in his Plea, ought not to be precluded from having his ſaid Action againſt him, becauſe he ſays, that the ſaid Plea, pleaded by the ſaid *John*, in Manner and Form aforeſaid, and the Subſtance therein contained, are in Law inſufficient to preclude him the ſaid *Timothy*, from having his ſaid Action againſt him the ſaid *John*, to which ſaid Plea, he the ſaid *Timothy* is under no Neceſſity, or any Ways bound by the Law of the Land to make an Anſwer; and this the ſaid *John* is ready to verify and prove; whereupon for want of a ſufficient Anſwer in this Particular, the ſaid *Timothy* prays Judgment, and that his Damages occaſioned by the Premiſſes may be awarded to him, *and ſo forth.*

Joinder.

And the ſaid *John* ſays, that his ſaid Plea, pleaded in Manner and Form aforeſaid, and the Subſtance therein contained, are in Law good and ſufficient to preclude him the ſaid *Timothy* from having his ſaid Action againſt the ſaid *John*; which ſaid Plea, and the Subſtance therein contained, the ſaid *John* is ready to verify and prove, as this Court ſhall pleaſe to direct; and becauſe the ſaid *Timothy* hath not anſwered the ſaid Plea, nor as yet any ways deny'd the Subſtance therein, the ſaid *John* as above prays Judgment, and that the ſaid *Timothy* may be precluded from having his ſaid Action againſt him, *and ſo forth*; but becauſe this his ſaid preſent Majeſty's Court is not yet determined what Judgment to give, of, and concerning the Premiſſes, a Day therefore is given to the ſaid Parties, to be before our Sovereign Lord the King at *Weſtminſter*, till *Wedneſday* next after the Octave of St. *Martin*, to hear their Judgment thereof, *and ſo forth*; for that the Court of our ſaid Sovereign Lord the King are not yet determined, *and ſo forth*; at which Day the ſaid Parties by their Attornies came before our ſaid Sovereign Lord the King at *Weſtminſter*; whereupon all and ſingular the Premiſſes being fully underſtood, and upon mature Deliberation thereof had by the Court of our ſaid Sovereign Lord the King now here, it appears to the ſaid Court, that the ſaid Plea, pleaded by the ſaid *John*, in Manner and Form aforeſaid, and the Subſtance therein contained, are in Law good and ſufficient to preclude the ſaid *Timothy* from having his ſaid Action againſt the ſaid *John*; and therefore it is conſidered, that the ſaid *Timothy* ſhall take nothing by his ſaid Bill, but that for his groundleſs Claim he be in the Mercy of the Court, and that the ſaid *John* be therefrom for ever diſmiſſed. And it is further conſidered, that the ſaid *John* ſhould recover againſt the ſaid *Timothy*, ſix Pounds and ten Shillings, by his ſaid Majeſty's Court here awarded to the ſaid *John*, with his Conſent, for his Expences and Coſts ſuſtain'd by him in defending this Suit, according to the Form of the Statute in ſuch Caſe made and provided; and the ſaid *John* may have his Execution thereof, *and ſo forth.*

Continuance.

Judgment for the Defendant.

The Caſe.

This Caſe is reported in 1 Salk. 10. *and Judgment, as may be obſerved above, was given for the Defendant; for though a Man may have an Action for the Continuance of a Nuſance, yet he can never have a new Action for the ſame Erection.*

Combes againſt the Hundred of Bradley.

4 Mod. 296. An Action upon the Statute of Winton, for a Robbery.

The Act of 13 Edw. 1.

Sets forth the Robbery.

Glouceſterſhire. The Inhabitants of the Hundred of *Bradley*, in the County of *Glouceſter*, were attached to anſwer, as well to our Sovereign Lord and Lady the King and Queen, as alſo to *Thomas Combes* (who ſues as well for our ſaid Sovereign Lord and Lady the King and Queen, as for himſelf) of a Plea, that whereas in and by a Statute publiſhed in the Parliament of our late Sovereign Lord King *Edward* the Firſt, at *Winton*, in the 13th Year of his Reign, reciting (amongſt other Things) ‘ that for as much as from Day to Day, Robberies, Murthers, Burnings and Theft, had been oftener uſed than they had been theretofore; and that Felons could not be attainted by the Oath of Jurors, which rather ſuffered Strangers to be robbed, and ſo paſſed without Puniſhment, than to indict the Offenders, of whom great Part had been People of the ſame Country; or at leaſt if the Offenders had been of another Country, the Receivers were of Places near, and that they did the ſame, becauſe an Oath was not given to the Jurors of the ſame Country where ſuch Felonies were done, and to the Reſtitution of Damages then hitherto no Penalties had been limited on them for their Concealment and Latches; *It is ordained*, and the ſaid late King to abate the Power of Felons, *eſtabliſhed* a Pain in that Caſe, ſo that from thenceforth for fear of the Pain, more than for fear of any Oath, they ſhould not ſpare nor conceal any Felonies; and commanded that Crys ſhould be ſolemnly made in all Counties, Hundreds, Markets, Fairs, and all other Places, where great Reſort of People ſhould be, ſo that none ſhould excuſe himſelf by Ignorance; that from thenceforth every Country ſhould be ſo well kept, that immediately upon ſuch Robberies and Felonies committed, freſh Suit ſhould be made from Town to Town, and from Country to Country; and that likewiſe when need required, Inqueſts ſhould be made in Towns by him, that ſhould be Lord of the Town, and after in the Hundred, and in the Franchiſe, and in the County, and ſometimes in two, three, or four Counties, in Caſe when Felonies ſhould be committed in Marches of Shires, ſo that the Offenders might be attainted. And if the Country would not anſwer for the Bodies of ſuch manner of Offenders, the Pain ſhould be ſuch, that every Country, (that is to ſay) the People dwelling in the Country, ſhould be anſwerable for the Robberies done, and alſo the Damages, ſo that the whole Hundred where the Robbery ſhould be done, with the Franchiſes, being within the Precinct of the ſame Hundred, ſhould be anſwerable for the Robberies done; and if a Robbery had been done in a Diviſion of two Hundreds, both the Hundreds, and the Franchiſes within them, ſhould be anſwerable; and after that the Felony or Robbery ſhould be ſo done, the Country ſhould have no longer Space than Half a Year; within which Half Year it ſhould behove them to agree for the Robbery or Offence, or elſe that they ſhould anſwer for the Bodies of the Offenders, as in and by the ſame Statute more fully may appear.’ And whereas certain Offenders unknown to the ſaid *Thomas*, on the 23d Day of *February*, in the fifth Year of the Reign of their ſaid Preſent Majeſties, at *Hampnot*, within the Hundred of *Bradley*, in the County of *Glouceſter*, in the King's Highway,

way, there aſſaulted the ſaid *Thomas* with Force and Arms, and feloniouſly took, plunder'd, and carried away from the ſaid *Thomas* 30 *l.* 12 *s.* 6 *d.* in Money, of the proper Monies of the ſaid *Thomas*, againſt the Peace of our ſaid Sovereign Lord and Lady the King and Queen; and the ſaid *Thomas*, immediately after the ſaid Felony and Theft committed as aforeſaid, made Hue and Cry of the ſaid Robbery and Felony at *Northleech*, within the Hundred aforeſaid, and then and there gave Notice of the ſaid Robbery and Felony to the Inhabitants of the ſaid Vill of *Northleech*; and within twenty Days before ſuing out the Original Writ of the ſaid *Thomas*, he the ſaid *Thomas* was examined upon his corporal Oath before *Thomas Maſters*, Eſq; (then an Inhabitant of *Cirenceſter*, near the ſaid Hundred of *Bradley*, in the County aforeſaid, and then, and now one of their Majeſty's Juſtices appointed to keep the Peace within the ſaid County of *Glouceſter*,) according to the Form of the Statute, made and publiſhed in the 27th Year of the Reign of our late Sovereign Lady Queen of *England*, *and ſo forth*; and the ſaid *Thomas Combe* upon his ſaid Oath declared he knew not the Parties that committed the ſaid Robbery or either of them; and within forty Days after the ſaid Robbery committed, the ſaid Inhabitants of the ſaid Hundred, have not made the ſaid *Thomas Combe* any Amends for the ſaid Robbery, nor have they yet anſwered for the Bodies of the ſaid Felons or Offenders, or taken the Bodies or Body of them, or either of them, but have ſuffered the ſaid Felons and Offenders to eſcape, in Contempt of our ſaid Sovereign Lord and Lady the King and Queen, to the great Damage of the ſaid *Thomas Combes*, and contrary to the Form of the ſaid Statute in ſuch Caſe made and provided; whereupon the ſaid *Thomas Combes*, (*who ſues in this Caſe as well for our Sovereign Lord and Lady the King and Queen, as for himſelf*,) by *Samuel Brewſter* his Attorney complains, that whereas certain Offenders unknown to the ſaid *Thomas Combes*, in the King's Highway, on the 23d Day of *February*, (*and ſo the Declaration in the Precedent goes on in the ſame Manner, as the above recited Original, to the Words*, but ſuffer'd the ſaid Felons and Offenders to eſcape; *which to avoid Prolixity I will not here inſert, and then the Precedent goes on*) in Contempt of our ſaid Sovereign Lord and Lady the King and Queen, to the great Damage of the ſaid *Thomas Combes*, and contrary to the Form of the ſaid Statute publiſhed in the ſaid 13th Year of the Reign of our ſaid late Sovereign Lord King *Edward* the Firſt; whereupon the ſaid *Thomas Combes* ſays, he is injured and endamaged to the Value of fifty Pounds; and therefore he brings this Suit, *and ſo forth*.

The Money taken.

According to the Act of 27 Eliz.

Oath made before a Juſtice of the Peace.

And the ſaid Inhabitants of the ſaid Hundred of *Bradley*, by *Richard Longford* their Attorney, come and defend the Force, Injury and Damages, and whatever elſe they ought to defend, when and where the Court will pleaſe to conſider thereof, and ſay that they are in no wiſe Guilty of the Premiſſes charged upon them, as the ſaid *Thomas Combes* (*who in this Caſe ſues as well for our ſaid Sovereign Lord and Lady the King and Queen, as for himſelf*) above complains againſt them; and of this *they ſubmit themſelves to the Country*; and the ſaid *Thomas Combes* (*who in this Caſe ſues, as well for our ſaid Sovereign Lord and Lady the King and Queen, as for himſelf*) does likewiſe

Not Guilty pleaded.

A Suggeſtion for a Jury of another Hundred.

The Award of the Venire.

likewiſe the ſame. And hereupon the ſaid *Thomas Combes*, who *and ſo forth*, ſays, that the ſaid *Inhabitants of the ſaid hundred* of Bradley, where the ſaid Robbery was committed, are Parties Defendants, againſt whom the ſaid *Thomas Combes* (*who ſues in this Caſe, as well for our ſaid Sovereign Lord and Lady the King and Queen, as for himſelf*) above complains in the Manner as aforeſaid; and for that Reaſon he prays their ſaid Majeſties Writ to be directed to the Sheriff of the County aforeſaid, to cauſe Twelve free and lawful Men of the neighbouring Hundred of *Slaughter* in the ſaid County, who are in no wiſe related either to the ſaid *Thomas Combes*, (*who in this Caſe ſues as well for our ſaid Sovereign Lord and Lady the King and Queen, as for himſelf*) or to the ſaid *Inhabitants of the ſaid Hundred of Bradley*; which ſaid Hundred of *Slaughter* is the next adjoining Hundred in the ſaid County, to the ſaid Hundred of *Bradley*; and becauſe the ſaid *Inhabitants of the ſaid Hundred of* Bradley *do not deny this Matter, it is granted to him*, and ſo forth. Therefore the Sheriff is commanded, that he cauſe Twelve free and lawful Men of the Hundred of *Slaughter*, each of which to have ten Pounds a Year at leaſt of Lands, Tenements or Rents, whereby the Truth of the Matter will be the better known, and who are in no wiſe related, either to the ſaid *Thomas Combes*, (*who in this Caſe ſues as well for our ſaid Sovereign Lord and Lady the King and Queen, as for himſelf*) or to the ſaid *Inhabitants of the ſaid Hundred of* Bradley, to recognize and make a Jury of the Country between the ſaid Parties, becauſe as well the ſaid *Inhabitants of the ſaid Hundred of* Bradley, as the ſaid *Thomas Combes*, who *and ſo forth*, have thereof ſubmitted themſelves to the Jury.

The Entry to introduce the Poſtea.

The Poſtea.

Afterwards, the Proceedings thereof are continued between the ſaid Parties of the ſaid Plea, the Jury being reſpited thereof between them, before our ſaid Sovereign Lord and Lady, the King and Queen, until from the Day of the Feaſt of *Eaſter*, in fifteen Days, *wherever our ſaid Sovereign Lord and Lady the King and Queen ſhall then be in* England, from thence next following, unleſs their ſaid Majeſties Juſtices, appointed to hold the Aſſiſes, in and for the ſaid County of *Glouceſter* before, on *Saturday* the third Day of *March*, at *Glouceſter* in the ſaid County, by Force of the Statute in that Caſe made and provided, ſhould come for the Default of Jurors, at which Day the ſaid Parties, by their ſaid Attornies, came before our Sovereign Lord and Lady the King and Queen, at *Weſtminſter*, and the ſaid Juſtices of our ſaid Sovereign Lord and Lady the King and Queen, before whom the ſaid Matter in Variance was tried, ſent hither their Record had before them in theſe Words. *Afterwards the Day and Place within contain'd, as well the within named* Thomas Combe, who in this Caſe ſues as well for our ſaid Sovereign Lord and Lady the King and Queen, as for himſelf, *as the within mentioned* Inhabitants of the hundred of Bradley, *by their within written Attornies, came before Sir* Giles Eyre, *Knight, one of their Majeſties Juſtices, aſſign'd to hold Pleas before their ſaid Majeſties, and* Thomas Breton, *Eſq; by Force of the Statute in that Caſe made and provided, aſſociated for this Purpoſe, by Virtue of their Majeſties Writ, commonly called the Writ* Si non Omnes, *to the ſaid* Giles Eyre, *and Sir* Nicholas Lechmere, *Knight, one*

one of the Barons of their ſaid Majeſties Court of Exchequer, their ſaid Majeſties Juſtices, appointed by Force of the Statute in that Caſe made and provided, to hold the Aſſiſes in and for the ſaid County of Glouceſter, (*the Preſence of the ſaid Sir* Nicholas Lechmere *not being expected,*) and ſo forth.

A Special Verdict.

And the Jurors of that Jury, whereof Mention is made within, being elected, tried and ſworn, to declare the Truth of the within Contents, ſay upon their Oaths that certain Offenders unknown to the ſaid Thomas, *on the 22d Day of* February, *in the fifth Yerr of the Reign of our ſaid Sovereign Lord and Lady the King and Queen, aſſaulted the ſaid* Thomas *with Force and Arms, in the King's Highway, at* Hampnot *in the Hundred of* Bradley, *in the ſaid County of* Glouceſter, *and feloniouſly took, plunder'd, and carried away from the ſaid* Thomas 30l. 10s. 6d. *in Money, there found by them upon the ſaid* Thomas, *againſt the Peace of our Sovereign Lord and Lady the King and Queen; and the ſaid* Thomas *immediately after the Felony, Robbery and Plunder within mentioned, made the ſaid Hue and Cry, at* Northleach *within the ſaid Hundred, of the within written Robbery and Felony, and then and there gave due Notice of the within written Robbery and Felony, to the Inhabitants of the ſaid Vill of* Northleach; *and after the ſaid Robbery and Felony ſo committed, and within twenty Days before ſuing out the ſaid original Writ of the ſaid* Thomas, *he the ſaid* Thomas *was examined upon his corporal Oath, before the within Written* Thomas Maſters, *Eſq; then, and now one of the Juſtices of our ſaid Sovereign Lord and Lady the King and Queen, appointed to keep the Peace in the ſaid County of* Glouceſter, *he the ſaid* Thomas Maſters *being an Inhabitant in* Cirenceſter, *in the ſaid County of* Glouceſter, *near the Hundred of* Bradley *in the County aforeſaid, according to the Statute for that Purpoſe, made and provided in the 27th Year of the Reign of our late Sovereign Lady* Elizabeth *Queen of* England, *and ſo forth; and upon his corporal Oath, he then depoſed before the ſaid* Thomas Maſters, *in the Manner and Form hereafter mentioned, and no otherwiſe.*

The Oath of the Party robbed.

Glouceſter. —— 'Be it remember'd, That upon the 7th Day of *June*, in the fifth Year of the Reign of our Sovereign Lord and Lady *William* and *Mary*, King and Queen of *England, and ſo forth*, in the Year of our Lord 1693. *Thomas Combes* of *Fairford*, in the County of *Glouceſter*, Servant to *Andrew Barker* of *Fairford*, aforeſaid, *Eſq*; came before me *Thomas Maſters*, Eſq; one of their Majeſties Juſtices of the Peace, for the ſaid County of *Glouceſter*, and took his Corporal Oath, That upon *Thurſday* the 23d Day of *February* laſt paſt, between the Hours of two and three of the Clock in the Afternoon of the ſame Day, as the ſaid *Thomas* was travelling from *Fairford* aforeſaid, towards *Tewxbury* in the ſaid County of *Glouceſter*, he was ſet upon in a Field near *Hampnot*, in the Hundred of *Bradley*, in the ſaid County of *Glouceſter*, by three Horſemen, armed with Swords and Piſtols, who there made an Aſſault upon the ſaid *Thomas Combes*, and did then and there feloniouſly take from him the ſaid *Thomas Combes* 30*l.* 12*s.* 6*d.* and one Sorrel Mare, which Mare is ſince return'd to *Fairford* aforeſaid, 30*l.* 11*s.* of which ſaid Money, was the proper Money of the ſaid *Andrew Barker* his Maſter, and the

‘ other one Shilling and ſix Pence was the proper Money of him
‘ the ſaid *Thomas Combes*. And the ſaid *Thomas Combes* farther
‘ depoſed, that the ſaid three Horſemen, which ſo took away the ſaid
‘ Money and Mare from him, were Strangers, and altogether unknown
‘ to him the ſaid *Thomas Combes*; and that the ſaid *Thomas*
‘ *Combes*, immediately after he was ſo robbed, went to *Northleach*,
‘ a Market-Town in the ſaid Hundred, and there made Hue and
‘ Cry after the ſaid Perſons that robbed him.—— *And the ſaid Jury upon their ſaid Oaths further ſay, that the thirty Pounds twelve Shillings and ſix Pence, mentioned in the within written Declaration, were the proper Monies of* Andrew Barker, *Eſq; then Maſter to the ſaid* Thomas Combes, in the Poſſeſſion of the ſaid Thomas Combes, *for the Uſe of the ſaid* Andrew Barker *his Maſter; and the ſaid Jurors further upon their Oath ſay, that the ſaid* Andrew Barker *was not preſent when the ſaid Robbery was committed; but whether, upon the whole Matter found by the ſaid Jurors in the Manner as above, the ſaid Inhabitants of the Hundred of* Bradley *were guilty of the Premiſſes charged upon them in the within written Declaration, according to the Form of the Statute in the within written Declaration, or no, the ſaid Jurors are altogether ignorant; and therefore they pray the Advice and Conſideration of the Court,* and ſo forth. *And if upon the ſaid whole Matter found by the ſaid Jurors, in the Manner as above ſet forth, it will appear to the Court of our ſaid Sovereign Lord and Lady the King and Queen here, that the ſaid Inhabitants of the ſaid Hundred of* Bradley *are guilty of the Premiſſes in the within written Declaration, charged upon them, againſt the Form of the ſaid Statute; the ſaid Jurors upon their ſaid Oaths ſay, that the ſaid Inhabitants of the ſaid Hundred of* Bradley *are thereof Guilty; as the ſaid* Thomas Combes, *who in this Caſe ſues, as well for our ſaid Sovereign Lord and Lady the King and Queen, as for himſelf, within complains againſt them, and they aſſeſs the Damages of the ſaid* Thomas Combes *on the within written Occaſion, beſides his Expences and Coſts laid out by him about his Suit in this Behalf, to thirty Pounds twelve Shillings and ſix Pence, and for his Expences and Coſts, to forty Shillings; but if upon the whole Matter found by the ſaid Jury in the Manner as above, it ſhall appear to the Court of our Sovereign Lord and Lady the King and Queen, that the Inhabitants of the ſaid Hundred of* Bradley *are not guilty of the ſaid Premiſſes; then the ſaid Jurors upon their Oath ſay, that the ſaid Inhabitants of the Hundred of* Bradley *are not guilty, as the ſaid Inhabitants of the ſaid Hundred of* Bradley *have within alledged in their Defence.*

The Continuance.

But becauſe the Court of our ſaid Sovereign Lord and Lady the King and Queen here are not determined what Judgment to give, of and concerning the Premiſſes; a Day therefore is given to the ſaid Parties, before our ſaid Sovereign Lord and Lady the King and Queen, until ——— for their hearing their Judgment thereupon; becauſe the ſaid Court of our ſaid Sovereign Lord and Lady the King and Queen are not yet determined thereupon, *and ſo forth.*

The Reſolution of the Caſe. 4 Mod. 303.

The Queſtion upon a Motion in Arreſt of Judgment here was, whether the Servant being robbed of his Maſter's Money, he being not preſent, might bring the Action againſt the Hundred, and declare de denariis ſuis Propriis.

After ſeveral Debates, the Plaintiff had his Judgment, by the Opinion of the whole Court; and it was held that in this Caſe, either the Maſter or the Servant might bring the Action.

Trinity, the Twelfth of King *George*.

A Declaration upon an Agreement to transfer 1000 l. South-Sea Stock.

The Agreement of the Defendant to ſell the Stock.

To be tranſferred at the next opening of the Books.

Averment of the Promiſe to perform the Agreement.

Averment of the Time when was the firſt opening of the Books.

The uſual Hours.

Averment that the Plaintiff was there ready to accept the Transfer.

London. *Thomas Lane* complains of *Richard Thornhill*, being in the Cuſtody of the Marſhal of the *Marſhalſey*, of our Sovereign Lord the King, before the King himſelf; for that whereas on the 17th Day of *June*, in the Year of our Lord 1726. at *London*, (that is to ſay) in the Pariſh of St. *Peter the Poor*, in the Ward of *Broadſtreet*, it was agreed between the ſaid *Thomas* and *Richard*, that the ſaid *Richard* ſhould ſell, and at the then next opening of the Transfer-Books of the Governours and Company of Merchants of *Great Britain*, trading to the *South Seas*, and other Parts of *America*, for encouraging the Fiſhery, ſhould transfer to the ſaid *Thomas* 1000 *l.* Intereſt or Stock, in the Principal and Capital Fund or Stock of the Governours and Company aforeſaid; And that the ſaid *Thomas*, at the then next opening of the ſaid Books, ſhould accept from the ſaid *Richard* the Transfer of the ſaid 1000 *l.* Credit in the ſaid Stock; and thereupon in Conſideration that the ſaid *Thomas*, then and there at the ſpecial Inſtance and Requeſt of the ſaid *Richard*, undertook, and then and their faithfully promiſed, that he the ſaid *Thomas* would well and truly perform, all and every thing contained in the Agreement, on his Part to be performed, he the ſaid *Richard* then and there undertook, and faithfully promiſed the ſaid *Thomas*, that he the ſaid *Richard* would well and truly perform and fulfill all Things contained in the ſaid Agreement on the Part of the ſaid *Richard* to be performed. And the ſaid *Thomas* in Fact ſaith, that the uſual Place for the Transferring of the Stock of the ſaid Company from one to another then was, and now is at the *South-Sea* Houſe, ſituate in a certain Street called *Broad-Street London*, in the Pariſh and Ward aforeſaid, in a certain Room of the ſame Houſe, commonly called the Transfer-Room, kept for that Purpoſe, and not elſewhere, between the Hours of nine in the Morning and one in the Afternoon of the ſame Day, and not at any other time of the Day; and that the firſt Time of opening the Books of the ſaid Company, next after the ſaid 17th Day of *June*, and after the ſaid Agreement for the transferring of the Stock of the ſaid Company, was on the third Day of *Auguſt*, in the ſaid Year of our Lord, and not before; And that he the ſaid *Thomas*, on the ſame third Day of *Auguſt*, in the ſaid Year of our Lord, came to the ſaid *South-Sea* Houſe, at, and in the ſaid Room called the Transfer-Room, in the Pariſh and Ward aforeſaid, Half an Hour before the ſaid Hour of one in the Afternoon of that Day, and there remained for the Space of Half an Hour, and until the ſaid Hour of one in the Afternoon of the ſaid Day, and till the Shutting up of the Transfer-Books, and was then and there ready to accept from the ſaid *R.* the ſaid 1000 *l.* Credit in the ſaid Stock, and to pay for the ſame to the ſaid *Richard*, at and according to the Rate aforeſaid, according to the Form and Effect of the ſaid Agreement.

Breach, that the Defendant was not there ready to transfer.

Nevertheleſs the ſaid *Richard*, not regarding his ſaid Promiſe and Undertaking made as above, but contriving, and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *Thomas* in this Particular, came not there on the ſaid third Day of *Auguſt*, in the ſaid Year, during all that Time, either by himſelf, or any other Perſon, to transfer to the ſaid *Thomas*, the ſaid 1000 *l.* Credit in the ſaid Stock, according to his ſaid Promiſe and Undertaking; nor hath the ſaid *Richard* at any Time ſince transferred to the ſaid *Thomas* the ſaid one thouſand Pounds Stock, or any Part thereof, but hitherto hath, and ſtill doth refuſe ſo to do.

Laid another Way.

And whereas the ſaid *Richard* on the ſame 17th Day of *June*, in the ſaid Year, at the Pariſh and Ward aforeſaid, bargained and ſold to the ſaid *Thomas*, one other thouſand Pounds Credit in the ſaid Stock at and according to the Rate of 102 *l.* for every 100 *l.* of the ſaid Stock in the whole, according to that Eſtimation, amounting to 1020 *l.* he the ſaid *Richard*, on the ſaid 17th Day of *Auguſt*, in the ſaid Year of our Lord, in the Pariſh and Ward aforeſaid, (in Conſideration that the ſaid *Thomas* would well and truly pay to the ſaid *Richard*, upon the Transfer of the ſaid laſt mentioned 1000 *l.* Credit in the ſaid Stock) undertook, and then and there faithfully promiſed, that he the ſaid *Richard* would well and truly transfer the ſaid laſt mentioned 1000 *l.* Credit in the ſaid Stock, in the Transfer-Books of the ſaid Company, upon the ſaid third Day of *Auguſt*, in the aboveſaid Year, being the then next Time of opening of the ſaid Transfer-Books of the ſaid Company, at the ſaid Houſe, called the *South-Sea* Houſe, ſituate in the ſaid Street, called *Broadſtreet London*, in the Pariſh and Ward aforeſaid. Nevertheleſs he the ſaid *Richard* not regarding his ſaid Promiſe and Undertaking laſt mentioned, but contriving, and fraudulently intending in this Particular, craftily and ſubtilly to deceive and defraud the ſaid *Thomas*, did not transfer the ſaid laſt mentioned 1000 *l.* Credit in the ſaid Stock, or any Part thereof, to the ſaid *Thomas*, upon the ſaid third Day of *Auguſt*, although the ſaid *Thomas* on the ſame third Day of *Auguſt*, in the aforeſaid Year, was ready at the ſaid *South-Sea* Houſe, in the Pariſh and Ward aforeſaid, upon his the ſaid *Richard*'s Transferring the ſaid laſt mentioned 1000 *l.* Credit in the ſaid Stock, to pay to the ſaid *Richard* the ſaid 1020 *l.* but the ſaid *Richard* hitherto altogether hath, and ſtill doth refuſe to transfer the ſame.

Laid another Way.

That ſuch a Day there was a Colloquium about South-Sea Stock.

An Agreement that the Defendant ſhould transfer another 1000 l. Stock to the Plaintiff.

That the Plaintiff ſhould pay him 102l. per Cent.

And whereas afterwards, (that is to ſay) on the ſame 17th Day of *June*, in the ſaid Year at *London* aforeſaid, in the ſaid Pariſh and Ward, a certain Diſcourſe was had and aroſe between the ſaid *Thomas* and *Richard*, of and concerning other Stock in the ſaid Company; upon which Diſcourſe it was then and there agreed between the ſaid *Thomas* and *Richard*, that the ſaid *Richard* ſhould ſell and transfer, at the then next opening of the Books of the ſaid Company, another 1000 *l.* Credit in the ſaid Stock; and that the ſaid *Thomas*, upon the Transfer of the ſaid laſt mentioned 1000 *l.* Credit in the ſaid Stock, by the ſaid *Richard* to the ſaid *Thomas* ſo to be made, ſhould accept the ſame Transfer, and ſhould pay to the ſaid *Richard* for the ſaid laſt mentioned 1000 *l.* Credit in the ſaid Stock, at and after the Rate of 102 *l.* for every 100 *l.* of the ſaid laſt mentioned 1000 *l.* Stock; and thereupon in Conſideration that the ſaid *Thomas*, on the ſame 17th Day of *June*, in the ſaid Year, at *London* aforeſaid, in the ſaid Pariſh and Ward, at the ſpecial Inſtance and Requeſt of the ſaid *Richard*, had undertook, and had then and there faithfully promiſed the ſaid *Richard*, to perform the ſaid laſt mentioned Agreement in every thing to be performed and fulfilled on his Part; the ſaid *Richard* then and there undertook, and faithfully promiſed the ſaid *Thomas*, that he the ſaid *Richard* would well and truly perform and fulfill every Thing contained in the ſaid laſt mentioned Agreement, on his Part to be performed and fulfilled. And the ſaid *Thomas* in Fact ſaith, that the ſaid Books of the ſaid Company, for transferring their ſaid Stock, after the ſaid 17th Day of *June*, were firſt opened on the ſaid third Day of *Auguſt*, in the ſaid Year of our Lord, (that is to ſay) at the ſaid Houſe of the ſaid Company, called the *South-Sea* Houſe, in a certain Room there in the ſaid Pariſh; and that then and there, and not elſewhere, the Stock of the ſaid Company was transferred from the Hour of Nine in the Forenoon, until the Hour of One in the Afternoon of that Day, and not afterwards. And the ſaid *Thomas* further ſaith, that he the ſaid *Thomas*, on the ſame third Day of *Auguſt*, in the ſaid Year, was at the ſaid Houſe called the *South-Sea* Houſe, ſituate in *Broadſtreet*, in the ſaid Pariſh and Ward, ready to accept from the ſaid *Richard* a Transfer of the ſaid 1000 *l.* Credit, and to pay for the ſame to the ſaid *Ricdard*, at the Rate aforeſaid, according to the Form and Effect of the ſaid laſt mentioned Agreement. Nevertheleſs the ſaid *Richard*, not regarding his ſaid laſt mentioned Promiſe and Agreement, but contriving, and fraudulently intending in this Particular, craftily and ſubtilly to deceive and defraud the ſaid *Thomas*: Although the ſaid *Richard* on the ſame 17th Day of *June*, in the ſaid Year, at *London* aforeſaid, in the ſaid Pariſh and Ward, had ſold to the ſaid *Thomas* the ſaid laſt mentioned 1000 *l.* Credit in the ſaid Stock. And although the ſaid *Richard* on the ſaid third Day of *Auguſt*, in the ſaid Year, in the Pariſh and Ward aforeſaid, was by the ſaid *Thomas*, often requeſted to transfer the ſaid laſt mentioned 1000 *l.* Credit, in the ſaid Stock of the ſaid Company, to the ſaid *Thomas*, according to the Tenour of the ſaid laſt mentioned Agreement; yet the ſaid *Richard* did not transfer the ſaid laſt mentioned 1000 *l.* Credit in the ſaid Stock to the ſaid *Thomas*, upon the ſaid third Day of *Auguſt* in the ſaid Year, in the Pariſh and Ward aforeſaid, according to the Tenour and Effect of his ſaid laſt mentioned Agreement. And whereas the ſaid *Richard* afterwards, (that is to ſay) on the ſame 17th Day of *June*, in the ſaid Year, at *London* aforeſaid, in the ſaid Pariſh and Ward, had bargained and ſold to the ſaid *Thomas* another 1000 *l.* Credit, in the Stock of the ſaid Company, at and according to the Rate of 102 *l.* for every 100 *l.* of the laſt mentioned 1000 *l.* in the Whole amounting to 1020 *l.* to be paid to the ſaid *Richard* by the ſaid *Thomas*, upon the Transfer of the ſaid laſt mentioned 1000 *l.* Credit in the ſaid Stock; and thereupon the ſaid *Richard* on the ſame 17th Day of *June*, in the ſaid Year, at *London* aforeſaid, in the ſaid Pariſh and Ward, in Conſideration thereof, undertook, and then and there faithfully promiſed the ſaid *Thomas*, that he the ſaid *Richard* would transfer to the ſaid *Thomas* the ſaid laſt mentioned 1000 *l.* Credit in the ſaid Stock, in the Transfer-Books of the ſaid Company, at the then next opening of the Books of the ſaid Company, at the Houſe called the *South-Sea*

Averment of the Time of opening the Books.

Averment of the Plaintiff's being there ready to accept the Transfer.

The Breach.

Laid another Way.

Houſe, ſituate in a Street called *Broadſtreet London*, in the ſaid Pariſh and Ward. Nevertheleſs the ſaid *Richard*, not regarding his ſaid laſt mentioned Promiſe and Undertaking, made in the Manner as above ſet forth, but contriving, and fraudulently intending craftily and ſubtily to deceive the ſaid *Thomas* in this Particular, did not tranſfer the ſaid 1000 *l.* Credit in the ſaid Stock, or any Part thereof, upon the ſaid third Day of *Auguſt*, although the ſaid *Thomas* on the ſaid third Day of *Auguſt*, in the Year aforeſaid, was ready at the ſaid *South-Sea* Houſe in the ſaid Pariſh to pay to the ſaid *Richard* the ſaid 1020 *l.* upon his transferring the ſaid 1000 *l.* Credit in the ſaid Stock, in the Manner as above agreed to be done, to the Damage of the ſaid *Thomas* 1500 *l.* and therefore he brings this Suit, *and ſo forth.*

This Declaration was peruſed and ſettled by Counſellor *Strange.*

Hillary, the Fifth of King *George* the Second.

A Declaration for driving a Coach over a Chaiſe, and thereby bruiſing the Plaintiff.

Middleſex. James Hambleton, late of the Pariſh of St. *Andrews Holborne*, Coachman, was attach'd to anſwer to *John Scarborrow* of a Plea of Treſpaſs upon the Caſe; and whereupon the ſaid *John*, by *Robert Martin* his Attorney, declares, that whereas on the firſt Day of *September*, in the Year of our Lord 1721, at the Pariſh of St. *John Hackney*, in the King's Highway, there he the ſaid *John* was journeying in a Chaiſe, and he the ſaid *James* was at the ſame Time there driving a Coach; and the ſaid *John* in Fact avers, that the ſaid *James* then and there ſo improvidently and careleſly managed his Cattle, that were then and there drawing the ſaid Coach, ſo that the ſaid Cattle drew the ſaid Coach upon the ſaid Chaiſe, in which the ſaid *John* was ſo Journeying, ſo that the ſaid Chaiſe then and there, by the Negligence of the ſaid *James*, was overturned by the ſaid Coach, and the ſaid *James* was much bruiſed thereby. And whereas alſo afterwards, (that is to ſay) the ſame Day and Year above at *Hackney* aforeſaid, in the ſaid County, he the ſaid *John* was driving another Chaiſe in the ſaid King's Highway, in the ſaid Pariſh of St. *John Hackney*, in the County aforeſaid, and then and there a certain Perſon, unknown to the ſaid *John*, who at that Time was a Servant to the ſaid *James*, was driving another Coach, of and belonging to the ſaid *James*; and the ſaid *John* doth in Fact aver, that the ſaid Servant of the ſaid *James* then and there drove and whip'd his Cattle drawing the ſaid Coach, in ſuch a negligent and careleſs Manner, that the ſame Cattle drew the ſaid Coach upon the laſt mentioned Chaiſe, in which the ſaid *John* was then and there as aforeſaid, ſo that the ſaid Chaiſe laſt mentioned was then and there overturn'd, by means whereof the ſaid *John* was grievouſly bruiſed and wounded; whereupon he the ſaid *John* ſaith, that he is injured and endamaged to the Value of fifty Pounds; and therefore brings this Suit, *and ſo forth.*

The Plaintiff not knowing whether it was the Defendant himſelf, or one of his Servants; here is another Charge upon the Servant of the like Nature.

This Declaration was peruſed and ſettled by Mr. Sergeant *Hawkins*, but the Cauſe was never try'd; however I was inform'd that the Defendant's Attorney, upon Advice with Counſel, was told the Declaration was well drawn.

Eaſter Term, the Third of King *George* the Second.

A Declaration for not marrying the Plaintiff purſuant to the Defendant's Promiſe.

Suffolk. *Elizabeth Hayward* complains of *Stephen Cook Moſley*, Eſq; being in Cuſtody of the Marſhal of the *Marſhalſey* of our Soverign Lord the King, before the King himſelf; for that whereas he the ſaid *Stephen Cooke Moſley*, on the 22d Day of *January*, in the Year of our Lord 1724, (then being a Perſon unmarried) at *St. Edmonds-Bury*, in the County of *Suffolk*, in Conſideration that ſhe the ſaid *Elizabeth* (then and yet being a Perſon unmarried) at the ſpecial Inſtance and Requeſt of the ſaid *Stephen Cook*, had then and there agreed with the ſaid *Stephen*, and then and there undertook, and faithfully promiſed the ſaid *Stephen*, that ſhe the ſaid *Elizabeth* would take the ſaid *Stephen Cook* to be her Huſband, and be coupled with him in lawful Matrimony, he the ſaid *Stephen Cook* undertook, and then and there faithfully promiſed the ſaid *Elizabeth*, that he the ſaid *Stephen Cook* would take the ſaid *Elizabeth* to be his Wiſe, and be coupled with her in lawful Matrimony. And although ſhe the ſaid *Elizabeth* giving Credit to the ſaid Promiſe and Undertaking of the ſaid *Stephen Cook*, hath hitherto refuſed to contract Matrimony with other Perſons, who had offer'd to marry her, and ſhe now continues unmarried. And although ſhe the ſaid *Elizabeth* hath always been ready and willing, from the Time of making the ſaid Promiſe and Undertaking, to take to Huſband, and be married to the ſaid *Stephen Cook*, at the ſaid Pariſh and County aforeſaid, according to the Tenor of her ſaid Promiſe and Undertaking: Nevertheleſs the ſaid *Stephen Cook*, not regarding his ſaid Promiſe and Undertaking, but contriving, and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *Elizabeth* in this Particular, and totally to hinder the ſaid *Elizabeth* of her Preferment in Marriage, hath not taken the ſaid *Elizabeth* to Wife, according to his ſaid Promiſe and Undertaking, made for that Purpoſe as aforeſaid. And whereas alſo afterwards, (that is to ſay) the ſame Day and Year laſt abovementioned, at the ſaid Pariſh, in the County aforeſaid, in Conſideration that the ſaid *Elizabeth*, at the ſpecial Inſtance and Requeſt of him the ſaid *Stephen Cook*, then and there undertook, and faithfully promiſed the ſaid *Stephen Cook* to marry the ſaid *Stephen Cook*, he the ſaid *Stephen Cook* undertook, and faithfully promiſed the ſaid *Elizabeth*, that he the ſaid *Stephen Cook* would be joined to the ſaid *Elizabeth* in lawful Matrimony. And although ſhe the ſaid *Elizabeth* was always ready and willing, from the Time of the making her ſaid Promiſe and Undertaking, to be join'd to the ſaid *Stephen Cook* in lawful Matrimony, (that is to ſay) at the ſaid Pariſh, in the County aforeſaid: Nevertheleſs he the ſaid *Stephen Cook*, not regarding his ſaid laſt mentioned Promiſe and Undertaking, but contriving, and fraudulently intending to deceive and defraud the ſaid *Elizabeth* in this Particular, and totally to hinder the ſaid *Elizabeth* from the Preferment and good Fortune that ſhe would have met with by ſuch Marriage, hath not taken the ſaid *Elizabeth* to Wife; nor is the ſaid *Stephen Cook* willing to be joined in Matrimony to the ſaid *Elizabeth*, but the ſaid *Stephen Cook* hath hitherto altogether refuſed ſo to do. And although he the ſaid *Stephen* afterwards, (that is to ſay) the 22d Day of *January*, in the Year of our Lord 1725, and oftentimes

Laid another Way.

times before, and after that Time hath been thereto requeſted by the ſaid *Elizabeth*, he the ſaid *Stephen Cook* always hitherto hath, and ſtill doth refuſe ſo to do, whereby ſhe the ſaid *Elizabeth* declares, that ſhe is injured and endamaged to the Value of 500 *l.* and therefore brings this Suit, *and ſo forth.*

This Declaration was likewiſe ſettled by Serjeant *Hawkins*, but the Defendant died before the Cauſe came on to be tried.

Of *Trinity* Term, in the 13th Year of the Reign of our Sovereign Lady *Anne*, now Queen of *Great Britain, and ſo forth.*

A Declaration for maliciouſly cauſing the Plaintiff to be impriſoned and indicted for Felony.

London. Be it remembered that heretofore, (that is to ſay) in *Eaſter* Term laſt paſt, *Richard Williams*, and *Hannah* his Wife, came before our Sovereign Lady the Queen at *Weſtminſter*, by *Richard Purſell* their Attorney, and then brought there into the Court of our ſaid Sovereign Lady the Queen, their Bill againſt *Anthony Palmer*, being in the Cuſtody of the Marſhal of the *Marſhalſey* of our ſaid Sovereign Lady the Queen, of a Plea of Treſpaſs upon the Caſe; and there are Pledges for the Proſecution, (that is to ſay) *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words, (that is to ſay) *London. Richard Williams*, and *Hannah* his Wife, complain of *Anthony Palmer*, being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lady the Queen, before the Queen herſelf; for that whereas ſhe the ſaid *Hannah* now is a good honeſt, true and faithful Subject of our ſaid Sovereign Lady the Queen, and hath all her Life-time hitherto carried and behaved herſelf amongſt all her Neighbours, and other faithful Subjects of our ſaid Sovereign Lady the Queen and her Predeceſſors, ſo as to be eſteemed by them of a good Name, Fame, Credit, Honeſt, and faithful Converſation and good Behaviour; and all her Life-time hitherto hath lived, remained, and continued without any Blot, or having committed any Felony or Larceny, and hath always been untouch'd, unſuſpected, and free from the Suſpicion and Imputation of any ſuch execrable and horrible Crime; by reaſon of which good Name, Fame, Credit and honeſt Converſation, ſhe the ſaid *Hannah* had not only gained to herſelf the Love and Favour of her Huſband, and all her Neighbours, but hath alſo reapt and enjoy'd great Advantages ariſing therefrom. Nevertheleſs the ſaid *Anthony*, together with one *Richard Hewett* and *Sarah* his Wife, being in no wiſe ignorant of the Premiſſes, but contriving, and maliciouſly intending unjuſtly to grieve the ſaid *Hannah*, and to injure and detract her the ſaid *Hannah* in her good Name, Fame, Credit and Reputation, but alſo to ſubject and bring her into Danger of loſing her Life, on the firſt Day of *April*, in the 12th Year of the Reign of our ſaid Sovereign Lady the Queen, in the Pariſh of St. *Buttolph*, in *Port-Soaken* Ward, falſly and maliciouſly laid a Charge of Felony againſt the ſaid *Hannah*, and to that End and Purpoſe, cauſed and procured her the ſaid *Hannah* to be impriſoned, and detained in Priſon for a long Time, (that is to ſay) for the Space of fifteen Days. And afterwards, (that is to ſay) on the 13th Day of *April*, in the ſaid Year at *London* aforeſaid, in the ſaid Pariſh and Ward, he the ſaid *Anthony*, together with the ſaid *Richard Hewett* and the ſaid *Sarah* his Wife,

That the Plaintiff Hannah was of good Fame, &c.

and free from the Charge, Imputation, or Suſpicion of Felony.

That the Defendant with others cauſed her to be impriſoned on a Suſpicion of Felony.

and exhibited a Bill of Indictment againſt her.

The Felony charged upon her.

Wife, out of their further Malice which they had againſt the ſaid *Hannah*, falſly and malitiouſly, and without any true or lawful Cauſe, exhibited a Bill of Indictment at the General Quarter-Seſſions of the Peace of our ſaid Sovereign Lady the Queen, held for the ſaid City of *London*, at the *Guild-Hall* of the ſame City, and within the ſame City, on the 13th Day of *April*, in the 12th Year aforeſaid, at *London* aforeſaid, in the ſaid Pariſh and Ward, before Sir *Richard Hoar*, Knight, Mayor of the ſaid City of *London*, Sir *Thomas Abney*, Knt. one of the Aldermen of the ſaid City, Sir *Peter King*, Knight, Recorder of the ſaid City, and Sir *Charles Peers*, Knight, another Alderman of the ſaid City, and others their Companions her ſaid Majeſty's Juſtices appointed to keep the Peace, in and for the ſaid City, and alſo to hear and determine divers Felonies, Treſpaſſes, and other Offences committed within the ſame City, exhibited a Bill of Indictment againſt the ſaid *Hannah*, by the Name of *Hannah Williams* late of *London* Spinſter, otherwiſe called *Hannah Williams*, Wife of *Richard Williams*, late of *London* Labourer, to the Jury of the Grand Inqueſt, duly impanelled, ſworn and charged at the ſaid General Quarter-Seſſions of the Peace, then and there held, to inquire for our ſaid Sovereign Lady the Queen, and the Body of the ſaid City; thereby charging, that ſhe the ſaid *Hannah*, on the firſt Day of *April*, in the 12th Year of the Reign of our ſaid Sovereign Lady *Anne*, Queen of *Great Britain*, *France*, and *Ireland*, Defender of the Faith, *and ſo forth*, about the Hour of Eleven in the Forenoon of the ſame Day, with Force and Arms, *and ſo forth*, feloniouſly broke and entered the Dwelling-houſe of one *Richard Hewett*, then and there ſituate (the ſaid *Sarah Hewett*, the Wife of the ſaid *Richard Hewett*, then and there being in the ſaid Dwelling-houſe) and that ſhe the ſaid *Hannah* then and there feloniouſly ſtole, took, and carried away, of and from the Monies of the ſaid *Richard*, *Hewett*, one Piece of golden Coin called a Guinea, of the Value of one and twenty Shillings and ſix Pence, and fifteen Shillings in Money, then and there being found in the ſaid Dwelling-houſe, againſt the Peace of our ſaid Sovereign Lady the Queen, her Crown and Dignity, and then and there falſly and maliciouſly affirmed, that the ſaid Bill of Indictment was true; whereby the Sheriffs of *London* aforeſaid were commanded, that they ſhould not omit, *and ſo forth*, but they ſhould take the ſaid *Hannah Williams* to anſwer, *and ſo forth*; which ſaid Indictment the ſaid Juſtices of the Peace, afterwards, (that is to ſay) at a Gaol-Delivery of *Newgate*, of our ſaid Sovereign Lady the Queen, held at *Juſtice-Hall*, in the *Old Baily*, in the Pariſh of St. *Sepulchres*, in the Ward of *Farringdon* without, for the ſaid City of *London*, on *Wedneſday*, (that is to ſay) the 15th Day of the ſame Month of *April*, in the 12th Year aforeſaid, before Sir *Richard Hoar*, Knight, Mayor of the ſaid City of *London*, Sir *Thomas Parker* Knight, appointed to hold Pleas before the ſaid Queen herſelf, *Robert Tracy*, Eſq; one of her Majeſty's Juſtices of the Bench, Sir *Thomas Abney*, Knt. and Sir *Samuel Garrard*, Bart. Aldermen of the ſaid City, Sir *Peter King*, Knight, Recorder of the ſame City, and others their Companions, Juſtices of our ſaid Sovereign Lady the Queen, appointed to deliver her ſaid Majeſty's Gaol of *Newgate* from Priſoners (then being there) with their own Hands, delivered into the ſame Court of Record, to be determined in due

That at another Seſſions ſhe was brought to the Bar,

and pleaded that ſhe was not Guilty.

And acquitted by the Jury.

Form of Law, *and ſo forth*. And thereupon the ſaid *Hannah Williams* under the Cuſtody of Sir *William Lewen*, Knt. and Sir *Samuel Clark*, Knt. Sheriffs of the ſaid City, came to that ſame Gaol-Delivery of her ſaid Majeſty's Gaol of *Newgate*, held for the ſaid City of *London*, at *Juſtice-Hall* aforeſaid, on the ſaid *Wedneſday* the ſaid 15th Day of *April*, in the Year aforeſaid, before her ſaid Majeſty's Juſtices laſt abovenamed, and others their ſaid Companions, was led to the Bar in the ſaid Court in her proper Perſon, and was committed to the Cuſtody of the ſaid Sheriffs; and immediately the ſaid *Hannah Williams* was allowed to acquit herſelf from the ſaid Felony above charged upon her in the ſaid Indictment; and for that Purpoſe the ſaid *Hannah Williams* pleaded, that ſhe was not Guilty thereof, and thereof ſubmitted herſelf upon her Country, whether ſhe was Guilty or Innocent thereof; and therefore immediately a Jury thereof came before her ſaid Majeſty's Juſtices laſt named, and others their ſaid Companions, into the ſame Court; and the Jurors of the ſaid Jury for that Purpoſe impanelled by the ſaid Sheriffs, (that is to ſay) *Andrew Jublett*, *Jeremiah Richardſon*, *Benjamin Jordan*, *Thomas Bodwell*, *John Young*, *Samuel Hilliard*, *John Bradhurſt*, *Joſeph Bradburn*, *Jonathan Garrett*, *Joſeph Clifton*, *John Moſs*, and *William Dell*, being ſummon'd came; who being choſen, try'd, and ſworn to declare the Truth of and concerning the Premiſſes, upon their Oaths ſaid, that the ſaid *Hannah Williams* was not Guilty of the Felony ſpecified in the ſaid Indictment charged upon the ſaid *Hannah*, as the ſaid *Hannah Williams* had as above alledged in her Defence, nor on that Occaſion had the ſaid *Hannah* ever withdrawn herſelf; therefore it was conſidered by the ſaid Court, that the ſaid *Hannah Williams* ſhould from thence be diſcharged of the ſaid Felony laid to her Charge in the abovementioned Indictment. By reaſon of which Premiſſes, they the ſaid *Richard* and *Hannah* were obliged to expend and lay out divers great Sums of Money, to obtain the ſaid *Hannah*'s Enlargement from her ſaid Impriſonment, and for the ſaid *Hannah* to acquit herſelf from the ſaid Felony as above charg'd upon her; and the ſaid *Hannah* was thereby much damnified, and in Danger of loſing her Life. Whereupon the ſaid *Richard Williams*, and *Hannah* his Wife declare, that they are injured and endamaged to the Value of 200 *l.* and therefore they bring this Suit, *and ſo forth*.

Wharton againſt Careiron.

A Declaration upon a Foreign Bill of Exchange againſt the Acceptor. Lilly 90.

Middleſex. ——— *David Careiron* late of *London* Merchant, and *D. M.* late of *London* Merchant, were attach'd to anſwer Sir *Michael Wharton* Knight, in a Plea of Treſpaſs upon the Caſe; and whereupon the ſaid Sir *Michael*, by *A. B.* his Attorney complains, that whereas one *Alexander Crommeline* (being a Merchant, and a Perſon trading and uſing Commerce on the 18th Day of *July* New Stile, being the ſeventh Day of the ſame Month *July*, *Engliſh* Stile, in the Year of our Lord 1702, at *Hambourgh*, (that is to ſay) in *London* aforeſaid, in the Pariſh of St. *Mary le Bow*, in the Ward of *Cheap*,) according to the Uſage and Cuſtom of Merchants, then and there made a certain Bill of Exchange (ſubſcribed with the Hand-Writing of the ſaid *Alexander*) directed to the ſaid *David* and *David* at *London* aforeſaid; and thereby required the ſaid *David* and *David*, at two Uſances and a Half of an Uſance, to pay that his firſt Exchange, or to the Order of *Lewis Mangin*, the Sum of 100 *l.* Sterling, Value receiv'd, and place it to Account, as by Advice; which ſaid Bill of Exchange afterwards, and before the End of the two Uſances and a Half, (that is to ſay) on the 18th Day of *July*, *Engliſh* Stile, in the ſaid Year of our Lord 1702, at *London* aforeſaid, in the ſaid Pariſh and Ward, was ſhewn to the ſaid *David* and *David*, for their Acceptance thereof; and the ſaid *David* and *David*, then and there, according to the Uſe and Cuſtom of Merchants, did accept the ſaid Bill of Exchange, and afterwards, (that is to ſay) the 19th Day of *July*, in the Year laſt mentioned, at the Pariſh and Ward aforeſaid, the ſaid *Lewis Mangin* by his Indorſement made upon that Bill of Exchange, according to the Uſage and Cuſtom of Merchants, ordered the ſaid Sum of 100 *l.* to be paid to one *Philip Wilkinſon*, *Sen.* of *Hull*, or Order; and afterwards, (that is to ſay) on the ſame Day and Year laſt mentioned, at the ſaid Pariſh and Ward, the ſaid *Philip*, by another Indorſement made upon the ſame Bill of Exchange, ſubſcribed with his Hand-Writing thereto, according to the Uſage and Cuſtom of Merchants, ordered the ſaid Sum of 100 *l.* to be paid to the Order of the ſaid Sir *Michael*, for Value receiv'd of *Robert Cook*; of which ſaid Indorſement the ſaid *David* and *David* afterwards, (that is to ſay) the Day and Place laſt mentioned, had Notice; whereby, and by the ſaid Uſage and Cuſtom of Merchants, they the ſaid *David* and *David* became liable, and obliged to pay the ſaid Sum of 100 *l.* to the ſaid Sir *Michael*, according to the Tenor of the ſaid Bill of Exchange; and being ſo liable, and obliged to pay the ſame, they the ſaid *David* and *David*, in Conſideration of the Premiſſes afterwards, (that is to ſay) the ſame Day and Year laſt mentioned, at the ſaid Pariſh and Ward undertook, and then and there faithfully promiſed to the ſaid Sir *Michael*, that they the ſaid *David* and *David*, would well and truly pay the ſaid Sum of 100 *l.* to the ſaid Sir *Michael*, according to the Tenor of the ſaid Bill of Exchange. And the ſaid Sir *Michael* in Fact ſays, that according to the Uſage of Merchants, one Uſance in a Bill of Exchange, between Merchants of *Hambourgh* and *London* aforeſaid, conſiſts of one Month from the Date of ſuch Bill, and no more; and that Half a Uſance conſiſts of fifteen Days, and no more, (that is to ſay) at the Pariſh and Ward aforeſaid. Nevertheleſs the ſaid *David* and *David*, having no Regard to their Promiſes and Undertaking, made in Form aforeſaid, but craftily and ſubtilly contriving, and fraudulently intending to deceive and defraud the ſaid Sir *Michael* in that Behalf, have not, or hath either of them paid the ſaid Sum of 100 *l.* or any Part thereof, to the ſaid Sir *Michael*, at the End of two Uſances and a Half, next after the making of the ſaid Bill of Exchange, or at any other Time ſince; but they, and each of them doth ſtill refuſe ſo to do, to the Damage of the ſaid Sir *Michael* 130 *l.* and therefore he brings this Suit, *and ſo forth*.

J. H.

77 W. S. Action of the Caſe againſt one for playing with falſe Dice.

J. H. complains of *N. B.* being in the Cuſtody of the Marſhal, *and ſo forth*, for that whereas the ſaid *N.* contriving, and ſubtilly intending to defraud and deceive the ſaid *J.* and in a fraudulent and deceitful Manner to get great Sums of Money from him the ſaid *J.* did (*ſuch a Day, Year and Place*) intice, allure, and prevail upon him the ſaid *J.* to play at Dice with the ſaid *N.* at a certain Play at Dice called (Five or Nine) for divers ſums of Money; by which Inticement and Allurement of the ſaid *N.* he the ſaid *J.* did play with the ſaid *N.* at Dice, at the Play aforeſaid called (Five or Nine) with Dice truly marked and even, and did then and there deliver the ſame to him the ſaid *N.* But when the Dice in Courſe happened to come to the Hands of him the ſaid *N.* to be thrown by him, he the ſaid *N.* then and there in a crafty and ſubtile Manner, withdrew, and made no Uſe of the ſaid true and even Dice, ſo delivered him by the ſaid *J.* but then and there in a crafty and ſubtil Manner, made Uſe of, and play'd with certain other falſe Dice, whereby the ſaid Numbers of (Five or Nine) by any Chance would never happen; by reaſon of which he the ſaid *J.* then and there in ſuch deceitful Manner, loſt to the ſaid *N.* great Sums of Money, in the whole amounting to forty-one Pounds ſix Shillings and eight Pence, of lawful Money of *England*, at that Play, which he the ſaid *N.* then and there carried away, to the Damage of him the ſaid *J.* fifty Pounds; and thereupon he brings this Suit, *and ſo forth.*

In the King's Bench.

Hillary, 24 & 25 *Car.* 2. Rol. 92.

A Declaration in Deceit for playing with falſe Dice.

London. *P. W.* complains of *R. T.* being in the Cuſtody of the the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, before the King himſelf; for that whereas the ſaid *R. T.* on the laſt Day of *June*, in the Twenty-fourth Year of the Reign of our Sovereign Lord *Charles* the Second, King of *England*, *and ſo forth*, at *London*, in the Pariſh of St. *Peter Chornhil*, in the Ward of *Cornhil*, contriving and deceitfully intending, craftily and ſubtilly to deceive and defraud the ſaid *P.* and in order unjuſtly and unlawfully to get and acquire divers Sums of Money, with falſe Dice, and in a falſe Play, craftily, ſubtilly and deceitfully procured, deſired, and ſolicited the ſaid *P.* on the ſaid laſt Day of *June*, in the ſaid Twenty-fourth Year at *London* aforeſaid, in the ſaid Pariſh and Ward, to play with Dice, at a certain Play called Hazard, with the ſaid *R.* by means of which Solicitation, Procurement, and deſire of the ſaid *R.* he the ſaid *P.* then and there was prevailed upon, and did play with the ſaid *R.* for divers Sums of Money; and that at that ſame Play with the ſaid *P.* the ſaid *R.* then and there at the ſaid Play called Hazard, with falſe Dice craftily, fraudulently, deceitfully and unlawfully acquired, obtain'd, gain'd to himſelf, and carried away, of and from the ſaid *P.* ſeventy Pieces of coined Gold called Guineas, each of which Pieces being lawful Money and Coin of this Kingdom, and of the Value of twenty Shillings, and alſo ſeventy Pounds in other Money,

ſets forth an Inticement to play,

that by ſuch Inticement he was prevailed on to play, and the Defendant uſed falſe Dies.

Indebitatus Aſſumpſit for 120 l.

of the proper Monies of the ſaid *P.* and whereas alſo (that is to ſay) on the ſame laſt Day of *June*, in the ſaid 24th Year at *London* aforeſaid, in the ſaid Pariſh and Ward, the ſaid *R.* was indebted to the ſaid *P.* in the Sum of one hundred and twenty Pounds of lawful Money of this Kingdom, for the like Sum before that Time receiv'd by the ſaid *R.* to the Uſe of the ſaid *P.* and being ſo indebted afterwards, (that is to ſay) on the ſame laſt Day of *June*, in the ſaid Twenty-fourth Year at *London* aforeſaid, in the ſaid Pariſh and Ward, the ſaid *R.* in Conſideration thereof, then and there undertook, and faithfully promiſed the ſaid *P.* well and truly to pay him the ſaid one hundred twenty Pounds, whenever after he ſhould be thereto required. Nevertheleſs the ſaid *R.* having no regard to his ſaid Promiſe and Undertaking made in the Manner as above ſet forth, but craftily and ſubtilly contriving and intending to defraud and deceive the ſaid *P.* in this Particular, hath not paid him the ſaid one hundred and twenty Pounds, or any Part thereof, or in wiſe made him Satisfaction for the ſame; (although the ſaid *R.* afterwards, (that is to ſay) on the ſame laſt Day of *June*, and afterwards at *London* aforeſaid, in the ſaid Pariſh and Ward, was by the ſaid *P.* thereto required) but hitherto altogether hath, and ſtill doth refuſe to pay the ſame, whereby the ſaid *P.* ſaith he is injured and endamaged to the Value of one hundred and fifty Pounds; and therefore he brings this Suit, *and ſo forth.*

Birks againſt **Trippet.**

Mich. the Eighteenth of King *Charles* the Second. *Roll* 3.

Saund. Rep. 28.

A Declaration for Non-performance of an Award.

Memorandum.

Yorkſhire. Be it remember'd that heretofore, (that is to ſay) in *Eaſter* Term laſt paſt, came before our Sovereign Lord the King at *Weſtminſter*, *John Birks*, by *Emanuel Scorah* his Attorney, and brought his Bill here into this Court, againſt *Burrowes Trippet*, Gent. one of the Clerks of Sir *Robert Henley*, Knt. Chief Clerk to our ſaid Sovereign Lord the King, aſſigned to inroll Pleas in this Court of our ſaid Sovereign Lord the King, before the King himſelf (preſent here in Court in his proper Perſon) of a Plea of Treſpaſs upon the Caſe; and there are Pledges for the Proſecution, (that is to ſay) *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words. *Yorkſhire. John Birks* complains of *Burrowes Trippet*, Gent. one of the Clerks of Sir *Robert Henley*, Knt. Chief Clerk to our ſaid Sovereign Lord the King, aſſigned to enroll Pleas in the ſaid Court of him our ſaid Sovereign Lord the King, before the King himſelf (preſent here in Court in his proper Perſon) for that whereas diverſe Quarrels, Diſcords and Diſputes had ariſen, and were depending between him the ſaid *John* and the ſaid *Burrowes*; and in order to make an End and final Determination whereof, and of all other Cauſes of Action then depending between them, as well the ſaid *John*, as the ſaid *Burrowes*, on the 14th Day of *April*, in the Year of our Lord 1666, at *Doncaſter* in the ſaid County, ſubmitted themſelves to ſtand to the Arbitration, Order and final Judgment of one *Francis Barker*, indifferently elected an Arbitrator between them, to arbitrate, order, and finally award, of, upon, and concerning the Premiſſes. And the ſaid *Burrowes* afterwards, (that is to ſay) on

The Submiſſion.

Mutual Promiſes to ſtand to the Award, or pay 40 l.

The Award.

That the Defendant ſhould pay 10 s. for feeding of Cattle.

That the Defendant ſhould pay other 10 s, for feeding other Cattle.

And 4 l. for the Plaintiff's Expences.

That upon the Payment thereof mutual Releaſes ſhould be given.

And that the Defendant ſhould deliver the Plt. a Fine.

That the Plaintiff ſhould deſiſt from Proſecuting the Defendant at the Seſſions.

the ſame Day and Year at *Doncaſter* aforeſaid, in the ſaid County, in Conſideration of the ſaid Submiſſion, and in Conſideration that the ſaid *John* did then and there faithfully Promiſe to the ſaid *Burrowes* to pay to the ſaid *Burrowes* forty Pounds of lawful Money of *England*, whenever after he ſhould be thereto required by him the ſaid *Burrowes*, if he the ſaid *John* ſhould not perform and fulfil all and ſingular thoſe Things which the ſaid Arbitrator ſhould ſo arbitrate, order and finally award, on his Part to be performed and fulfilled, undertook, and then and there faithfully promiſed the ſaid *John*, that if he the ſaid *Burrowes* ſhould not perform and fulfil all and ſingular thoſe Things which the ſaid Arbitrator ſhould arbitrate, order and award, on his Part to be performed and fulfilled; that then the ſaid *Burrowes* would well and truly pay and ſatisfie to the ſaid *John* forty Pounds of lawful Money of *England*, when after he ſhould be thereto required. And the ſaid *John* in Fact declares, that the ſaid Arbitrator did undertake the Trouble of Arbitrating, Ordering and Awarding between them the ſaid *John* and *Burrowes*, of and concerning the Premiſſes, and did by his Arbitration made afterwards thereon, (that is to ſay) on the 21ſt Day of the ſame Month of *April*, in the ſaid Year of our Lord 1666, at *Doncaſter* aforeſaid, in the ſaid County, arbitrate, order and award between them, in Manner and Form following, (that is to ſay) Firſt that the ſaid *Burrowes*, ſhould pay to the ſaid *John* the Sum of ten Shillings, for, and in Conſideration of certain Damages, which the ſaid *John* had ſuſtained in an Action of Treſpaſs and Aſſault; and alſo twenty Shillings more for the ſaid *John*'s having kept and depaſtured a certain Horſe of the ſaid *Burrowes*; and furthermore the ſaid Arbitrator did arbitrate, order and award, that the ſaid *Burrowes* ſhould pay to the ſaid *John*, another ten Shillings for the ſaid *John*'s having kept certain Beaſts, and for keeping and applying Medicines to two young Bullocks of the ſaid *Burrowes*, and moreover the Sum of four Pounds towards his the ſaid *John Birks*'s lawful Expences laid out about divers Differences had between them; which ſaid Sums amounting in the whole to ſix Pounds, the ſaid Arbitrator did arbitrate, and award the ſaid *B.* to pay to the ſaid *J.* upon the 23d Day of the ſame Month of *April*, at the Manſion-Houſe of *Henry Jenkinſon*, in the Pariſh of *Hanſworth*, in the ſaid County of *York*; and that upon Receipt of the ſaid ſix Pounds, general Releaſes under the Hands and Seals of them, and each of them, ſhould be mutually given and delivered from the Beginning of the world until the ſaid 23d Day of *April*, in the ſaid Year of our Lord 1666. And alſo that the ſaid *Burrowes* ſhould deliver to the ſaid *John* a certain Fine concerning and belonging to the ſaid *John Birks*, and one *John Marriot*, late of the Pariſh of *Hanſworth* aforeſaid, in the ſaid County. And alſo the ſaid Arbitrator, in order to make Peace, and to determine the ſaid Diſputes and Differences, and out of Regard to the quiet of the ſaid *J.* and *B.* did furthermore Arbitrate, Order and Award, that the ſaid *John* from the Date of the ſaid Releaſes, ſhould ceaſe and deſiſt from all further Proſecution at the General Seſſions of the Peace againſt the ſaid *Burrowes*. And the ſaid *John* in Fact declares, that although the ſaid *John* did well and faithfully perform and fulfil all and ſingular the Premiſſes ſpecified in the above Award, on the Part of the ſaid *John* to be performed and fulfilled, according to the Form and Effect of the ſaid Award; *yet the ſaid* John *in Fact avers,*

avers, that the ſaid *B.* hath not paid the ſaid ſix Pounds to the ſaid *J. Birks* upon the ſaid 23d Day of *April*, in the ſaid Year of our Lord 1665, at, or in the ſaid Manſion-houſe of him the ſaid *Henry Jenkinſon*; or any where elſe, nor delivered the ſaid Fine to the ſaid *John*, according to the Form and Effect of the ſaid Award, altho' the ſaid *B.* afterwards, (that is to ſay) on the 24th Day of *April*, in the ſaid Year of our Lord 1666, at *Doncaſter* aforeſaid, was thereto required. *And the ſaid* John *further avers, that after the making of the ſaid Award, and before the Exhibiting of the Bill of the ſaid* John *againſt the ſaid* Burrowes, (*that is to ſay*) *on the twenty-eighth Day of* March, *in the ſaid Year of our Lord* 1666, *at* Doncaſter *aforeſaid, in the ſaid County of* York, *he the ſaid* John *requeſted the ſaid* Burrowes, *to pay to him the ſaid* John *the ſaid Sum of forty Pounds according to his ſaid Promiſe and Undertaking made as above*, (*the ſaid* Burrowes *not having perform'd and fulfilled the Matter ſpecified in the ſaid Award on his Part to have been perform'd*,) *but he the ſaid* Burrowes *then and there refuſed ſo to do.* Nevertheleſs the ſaid *Burrowes*, having no Regard to his ſaid Promiſe and Undertaking, made in the Manner as above, but contriving, and fraudulently intending in that Behalf, craftily and ſubtilly to deceive and defraud him the ſaid *J. Birks* of the ſaid forty Pounds, hath not yet paid the ſame to the ſaid *John* according to his ſaid Promiſe and Undertaking, nor hath hitherto made the ſaid *John* any Satisfaction for the ſame; whereupon the ſaid *John* declares, that he is injured and endamaged to the Value of one hundred Pounds; and therefore he brings this Suit, *and ſo forth.*

The Breach.

Imparlance.

Special Plea.

Confeſſing the Award.

And the mutual Promiſes.

But that before the making the Award, the Plaintiff was Indebted to the Defendant in other Sums of Money.

And now at this Day, (that is to ſay) on *Tueſday* next after three Weeks from St. *Michael*, this ſame Term, (to which Day the ſaid *Burrowes* had Leave to imparl to the ſaid Bill, and then to anſwer, *and ſo forth*,) came as well the ſaid *J.* by his ſaid Attorney, as the ſaid *B.* in his proper Perſon, before our ſaid Sovereign Lord the King at *Weſtminſter*; and the ſaid *B.* defends the Force and Injury, and Damages, and whatever elſe he ought to defend, when and where this Court will conſider thereof; and ſaith, that the ſaid *J. Birks* ought not to have or maintain his ſaid Action thereon againſt him, becauſe he ſaith that 'tis very true, that he the ſaid *B.* and the ſaid *J. B.* did ſubmit themſelves to ſtand to the Award, Order, and final Judgment of the ſaid *Francis Barker* an Abitrator, between them indifferently elected to arbitrate, order, and finally award of and concerning the Premiſſes; and that he the ſaid *B.* thereupon undertook to perform and fulfil all and every Thing, which the ſaid Arbitrator ſhould adjudge and award on the Part of him the ſaid *B.* to be performed and fulfilled, as the ſaid *John* doth above alledge; but the ſaid *B.* further pleads in his Defence, that after the making of the ſaid Submiſſion, and alſo after the ſaid Promiſe and Undertaking of him the ſaid *B.* and before that the ſaid Arbitrator made any Award, or final Judgment, between him the ſaid *B.* and the ſaid *J. B.* (that is to ſay) on the 20th Day of *April*, in the ſaid Year of our Lord 1656, at *Doncaſter* aforeſaid, in the ſaid County of *York*, the ſaid *John* was indebted to the ſaid *B.* in four Pounds of lawful Money of *England*, as well for Fees by him the ſaid *J.* to the ſaid *B.* as Attorney of and for him the ſaid *J.* before, and at that Time due, owing and unpaid; as for divers Sums of Money before that Time expended and laid out by the ſaid *B.* for the ſaid *J.*

at his Inſtance and Requeſt, which ſaid Debt of four Pounds, due and owing to the ſaid *B.* by the ſaid *J.* ſo as aforeſaid, the ſaid Arbitrator afterwards, (that is to ſay) the ſame Day and Year laſt abovementioned at *Doncaſter* aforeſaid, had Notice. And the ſaid *B.* then and there made appear to the ſaid Arbitrator, that the ſaid four Pounds was juſtly owing to the ſaid *B.* and ought to have been paid by the ſaid *J.* and then and there he the ſaid *B.* requeſted the ſaid Arbitrator to make an Allowance for the ſame to the ſaid *B.* by the final Award of the ſaid Arbitrator, between him the ſaid *B.* and the ſaid *J.* And the ſaid *B.* furthermore pleads in his Defence, that the ſaid Arbitrator afterwards, (that is to ſay) on the ſaid 21ſt Day of *April*, in the ſaid Year of our Lord, at *Doncaſter* aforeſaid, made his ſaid Award between him the ſaid *B.* and the ſaid *J.* without taking into his Conſideration, or making any Allowance to the ſaid *B.* for his ſaid Debt of four Pounds, due, owing and unpaid to the ſaid *B.* by the ſaid *J.* as aforeſaid, notwithſtanding Proof thereof had been there given and made to the ſaid Arbitrator by the ſaid *B.* ſo as aforeſaid. And this the ſaid *B.* is ready to verify: Wherefore he prays Judgment, whether the ſaid *J.* ought to have, or maintain his ſaid Action upon the ſaid written Award, made in the Manner and Form aforeſaid, againſt him the ſaid *B.* *and ſo forth.*

That he requeſted the Arbitrator to make an Allowance of his ſaid Debt.

But that he made the Award without having any Conſideration of the Defendant's ſaid Debt.

There was a Demurrer *to this Plea, and a Joynder in* Demurrer; *and* Saunders *of Counſel with the* Defendant, *did not inſiſt upon the Sufficiency of his* Plea *as a* Bar, *but laid perdue, and took a material Exception to the* Declaration, *which was for want of what I have here above inſerted in* Italick *to make it good; for as this Promiſe to pay the* 40 l. *was collateral to the* Award, *and not a Duty ariſing therefrom, and to be paid upon* Requeſt, *a* Requeſt *is therefore neceſſary to be ſet forth; but if it had been a Duty ariſing out of the* Award, *then the bringing the* Action *is a ſufficient* Requeſt; *and to warrant this to be Law, are the ſeveral* Caſes *following.* 1 Keb. 927. 2 Keb. 10, 126. 1 Lev. 48, 289. 2 Lev. 198. 3 Lev. 363, 366.

And Caſes to warrant that not to be a good Plea, are the Caſes following. 1 Roll's Abr. 257. 2 Mod. 309. 3 Mod. 264. 1 Salk. 72, 74. 2 Saund. 190, 293, 337. 1 Saund. 326.

In Caſe upon a Promiſe to pay Money upon a Wager.

Suſſex. *A. B.* and *C. D.* complain of *E. F.* being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, before the King himſelf; for that whereas (*ſuch a Day, Year and Place*) in the County aforeſaid, a certain Diſcourſe was had and aroſe between the ſaid *A. B.* and *C. D.* and the ſaid *E. F.* concerning ſeven Quarters of Barley, to be carried by the ſaid *A. B.* and *C. D.* in a Waggon, drawn by a Team of three Horſes, and two Mares, from the Bottom of *Littleton-Hill* in *Waltham*, in the ſaid County of *Suſſex*, unto the Top of the ſame Hill, before the firſt Day of *May*, commonly called *May-Day*, then next following; upon which ſaid Diſcourſe then and there, (that is to ſay) the ſaid (*ſuch a Day, Year and Place*) in the County aforeſaid, in Conſideration that the ſaid *A.* and *C.* for, and in Conſideration of two Shillings and ſix Pence of lawful Money of *England*, in Hand paid and deliver'd to them by the ſaid *E. F.* at that Time, had then and there undertook, and faithfully promiſed the ſaid *E. F.* that they the ſaid *A.* and *C.* would carry the ſaid ſeven Quarters of Barley, in a Waggon drawn by a Team of three Horſes and two Mares, from the Bottom of the ſaid *Littleton-Hill* in *Waltham* aforeſaid, unto the Top of the ſame Hill, before the firſt Day of *May*, commonly called *May-Day* then next following; or otherwiſe they the ſaid *A.* and *C.* undertook, and faithfully promiſed the ſaid *E. F.* that they would pay to the ſaid *E. F.* eight Pounds of lawful Money of *Great Britain*, he the ſaid *E.* did then and there undertake, and then and there faithfully promiſed the ſaid *A.* and *C.* that if they the ſaid *A.* and *C.* ſhould carry the ſaid ſeven Quarters of Barley in a Waggon, drawn by a Team of three Horſes and two Mares, from the Bottom of the ſaid *Littleton-Hill* in *W.* aforeſaid, unto the Top of the ſame Hill, before the firſt Day of *May*, commonly called *May-Day* then next following; that then he the ſaid *E. F.* over and above the ſaid two Shillings and ſix Pence, in Hand paid and deliver'd to them the ſaid *A.* and *C.* by the ſaid *E. F.* as aforeſaid, would well and truly pay to the ſaid *A.* and *C.* as much more Money, as together with the ſaid two Shillings and ſix Pence, ſhould make the Sum of ten Pounds of lawful Money of *Great Britain*; and the ſaid *A.* and *C.* in Fact ſay, that they the ſaid *A.* and *C.* afterwards, and before the ſaid firſt Day of *May*, (that is to ſay) (*ſuch a Day and Year*) did carry ſeven Quarters of Barley in a Waggon, drawn by a Team of three Horſes and two Mares, from the Top of the ſaid *Littleton-Hill* in *Waltham* aforeſaid; and that they the ſaid *A.* and *C.* afterwards, (that is to ſay) (*ſuch a Day, Year and Place*) gave Notice thereof to the ſaid *E. F.* and then and there requeſted the ſaid *E. F.* to pay to them the ſaid *A.* and *C.* nine Pounds ſeventeen Shillings and ſix Pence, of lawful Money of *Great Britain*; being ſo much Money, as together with the ſaid two Shillings and ſix Pence, in Hand paid and delivered to the ſaid *A.* and *C.* as aforeſaid, made and amounted to the ſaid Sum of ten Pounds, according to the ſaid Promiſe and Undertaking of him the ſaid *E. F.* Neverthelеſs the ſaid *E. F.* not regarding his ſaid Promiſe and Undertaking, but contriving, and fraudulently intending in that Behalf, craftily and ſubtilly to deceive and defraud the ſaid *A.* and *C.* hath not paid the ſaid Sum of nine Pounds ſeventeen Shillings and ſix Pence to the ſaid *A.* and *C.* or either of them, (although he the ſaid *E.* was by them the ſaid *A.* and *C.* afterwards, (that is to ſay) (*ſuch a Day, Year and Place*) and often afterwards requeſted thereto) according to his ſaid Promiſe and Undertaking, nor in any Manner hitherto made the ſaid *A.* and *C.* or either of them Satisfaction for the ſame, whereby they the ſaid *A.* and *C.* ſay they are injured and endamaged to the Value of twenty Pounds; and therefore they bring this Suit, *and ſo forth.*

Somerſetſhire. *A. B.* by *G. T.* his Attorney, complains againſt *C. D.* being in the Cuſtody of the Marſhal of the *Marſhalſey*, of our Sovereign Lord the King, before the King himſelf; for that whereas the ſaid *A.* is, and for a long Time hath been ſeized of and in a Meſſuage, and Barber's Shop, with the Appurtenances in *B.* in the County aforeſaid, Parcel of that Meſſuage, and of and in a

Action upon the Caſe for an Annoyance by the Defendant being a Shoemaker, in conveying his Smell by his Oils, and other Excrements, out of his Houſe, by a Gutter by him made to the Houſe and Shop of the Plaintiff being a Barber, whereby he loſt his Cuſtomers.

Yard near adjoining to the ſaid Meſſuage, and of and in a Garden near adjoining to the ſaid Yard, with the Appurtenances in *B.* aforeſaid, in his Demeſne as of Fee. And alſo whereas the ſaid *C.* on and from the firſt Day of *October*, in the ſixth Year of the Reign of his preſent Majeſty *George* the Second, King of *Great Britain, and ſo forth*, did, and always afterwards, until the Day of his ſaid *A.*'s Exhibiting his ſaid Bill, hath occupied and poſſeſs'd a Houſe and Shoemaker's Shop, and a Working-houſe, with the Appurtenances in *B.* aforeſaid, near adjoining to the ſaid Meſſuage, Yard and Garden of the ſaid *A.* on the South-Side thereof. And the ſaid *C.* on the ſaid firſt Day of *October*, in the ſaid Year was, and ever ſince hath been, and now is a Cordwainer, and during the ſaid whole Time, uſed ſeveral Kinds of Oils, in and about his ſaid Art and Myſtery of a Cordwainer. And the ſaid *C.* endeavouring, and maliciouſly intending to endamage, and prejudice the ſaid *A.* and wholly to deprive and hinder him of the Uſe, Profit and Benefit of the Meſſuage, Barber's Shop, Yard and Garden aforeſaid, on the firſt Day of *October*, in the ſaid Year at *B.* aforeſaid, newly made a certain Sink in the Working-houſe of the ſaid *C.* coming from the ſaid Working-houſe, into the Yard of the ſaid *A.* and continued the ſame from the ſaid firſt Day of *October*, to the Day of exhibiting the Bill of the ſaid *A.* to the Intent that the Oils daily uſed, and to be uſed by him the ſaid *C.* in his ſaid Working-houſe, and other Filthineſs pour'd and caſt forth out of the Working-houſe of the ſaid *C.* might run into the ſaid Yard of the ſaid *A.* and from thence be convey'd into his ſaid Garden. And the ſaid *C.* on the ſaid firſt Day of *October*, and from Time to Time, during the whole Time aforeſaid, caſt forth Dung, Excrements, Filthineſs, and Noiſome Oils, and other Corruptions out of the Working-houſe of the ſaid *C.* in great Abundance and Quantity; ſo that by making of the ſaid Gutter, and pouring therein the ſaid ſtinking Oils and other Filthineſs, the ſame from Time to Time during the ſaid Time, ran out of the ſaid Working-houſe of the ſaid *C.* into the ſaid Yard of the ſaid *A.* and from the ſame Yard of the ſaid *A.* into his ſaid Garden; and the ſaid ſtinking Oils and other Filthineſs, during the Time aforeſaid, ſo running and coming into the Yard and Garden of the ſaid *A.* was very Noiſome, and did great Hurt and Prejudice to his ſaid Garden. And by Reaſon of the ſaid Gutter and Sink made as above, and pouring therein the ſaid ſtinking Oils and other Filthineſs, he the ſaid *A.* hath not only loſt the whole Profit and Commodity of his ſaid Yard and Garden, during the whole Time aforeſaid, but hath alſo thereby loſt the Uſe and Profit of his ſaid Trade of a Barber, during the whole Time aforeſaid; for that his Cuſtomers, by means of the ſaid Sink and Gutter, and the Oils and Filthineſs poured and caſt therein, refuſed to come to his ſaid Shop, to the Damage of the ſaid *A.* forty Pounds; and therefore he brings this Suit, *and ſo forth.*

This Caſe was adjudg'd in *Gouldsborough* for the Plaintiff.

A Declaration for not making a ſteeping Fat (for the making of Soap) in an artificial and workman-like Manner, purſuant to Agreement.

Norfolk. Francis Reeder, late of *Pulham St. Mary*, in the County aforeſaid, Carpenter, was attach'd to anſwer to *Ely Philipps*, in an Action of Treſpaſs upon the Caſe, *and ſo forth*; and whereupon the ſaid *Ely*, by *Henry Clift* his Attorney complains, that whereas as on the 28th Day of *October*, in the 4th Year of the Reign of his preſent Majeſty, at *Tasburgh*, a certain Diſcourſe aroſe and was had between them the ſaid *Ely* and *Francis*, concerning the Art and Myſtery of making Pot Aſhes, which the ſaid *Ely* at that Time did, and for a long Time before had, and ſtill doth uſe and exerciſe, and of and concerning a new Veſſel called a Steeping Fat, (being a Veſſel uſeful and neceſſary, in and about the ſaid Buſineſs of making Pot-Aſhes) to be made by the ſaid *Francis*, for and to be uſed by him the ſaid *Ely*; and upon that Diſcourſe, the ſaid *Francis* then and there (that is to ſay) on the ſame 28th Day of *October*, in the 4th Year abovesaid, at *Tasburgh* aforeſaid, in Conſideration that the ſaid *Ely*, at the ſpecial Inſtance and Requeſt of the ſaid *Francis*, then and there undertook, and faithfully promiſed to pay him the ſaid *Francis* 90 *s.* of lawful Money of *England*, for ſuch Veſſel called a Steeping Fat, upon Delivery thereof, undertook, and then and there faithfully promiſed the ſaid *Ely*, that he the ſaid *Francis* would firmly, artificially, and in a workman-like Manner, make and finiſh ſuch Veſſel, or Steeping Fat, of good, well ſeaſon'd, and the beſt plain Oak, and all other Things neceſſary thereto, ſo that the ſaid Veſſel ſhould contain all Liquors uſed in the Art of making Pot-Aſhes to be put therein, without the running out, or leaking of ſuch Liquor, through any Part of the ſaid Veſſel, and would well and truly deliver to the ſaid *Ely*, the ſame Veſſel ſo made and finiſhed, within one Week, next after the making of the ſaid Promiſe and Undertaking by the ſaid *Francis*, as above ſet forth. Nevertheleſs the ſaid *Francis* having no Regard to his ſaid Promiſe and Undertaking, but contriving, and fraudulently intending, craftily and ſubtilly to deceive and defraud the ſaid *Ely* in this Particular, hath not made, or delivered to the ſaid *Ely*, any ſuch Veſſel, as he ought to have done, according to his ſaid Promiſe and Undertaking, altho' he had been often thereto required; but inſtead thereof, contrary to his ſaid Promiſe and Undertaking, hath omitted, and totally neglected to make and deliver ſuch Veſſel, as aforeſaid. And whereas the ſaid *Francis* on the 5th Day of *November*, in the ſaid 4th Year, at *Tasburgh* aforeſaid, had bargained with the ſaid *Ely*, for him the ſaid *Francis* to make in a good and workman-like Manner, with good *Engliſh* Oak, a certain other Veſſel called a Steeping Fat, fit for the making Pot-Aſhes, for the Sum of ninety Shillings, to be paid for the ſame by the ſaid *Ely*; and the ſaid *Francis* inſtead thereof, made the ſaid Veſſel laſt above-mentioned, in ſo negligent, improvident, and unworkman-like Manner, that the ſaid *Ely* could not make any Pot-Aſhes in the ſame, and was therefore totally retarded and hinder'd from the Uſe of his Trade or Myſtery in making Pot-Aſhes for a long Time, (that is to ſay) from the 12th Day of *November*, in the ſaid 4th Year, until the 1ſt Day of *April* next following, to the Damage of the ſaid *Ely* 50 *l.* and thereupon he brings this Suit, *and ſo forth.*

Whetherald

Whetherald againſt Clarkſon.

Michaelmas the 12th of King *William* the Third. *Roll* 1870.

A Declaration in Caſe for ſcandalous Words ſpoken of a Virgin, whereby ſhe loſt her Marriage. Lut. 1296.

Being a Perſon of good Character and Circumſtances.

York. *James Clarkſon* late of *Askrigg*, in the ſaid County, was attached to anſwer to *Margaret Whetherald*, in an Action of Treſpaſs upon the Caſe, and thereupon ſhe the ſaid *Margaret*, by *J. L.* her Attorney complains, that whereas ſhe the ſaid *Margaret* now is a good, true, and faithful Subject of our Sovereign Lord the King, and from the Time of her Nativity hitherto hath been, a chaſte and honeſt Virgin, never known by any Man whatſoever; and hath been accounted, eſteemed, and reputed amongſt good, honeſt, and prudent Men, as well her Neighbours, as others, Subjects of our ſaid Sovereign Lord the King, to be of a good Name, Character, honeſt Behaviour and Converſation, and hath all her Life-time hitherto lived, and continued untouched and unſuſpected, of the atrocious Crimes of Perjury, Fornication, or Incontinency, or either of them, or any ſuch like enormous Crimes, and by Means thereof ſeveral young Men of good Name and Character, have at ſeveral Times deſired to take the ſaid *Margaret* to be their Wife, and in particular one *A. B.* of *Colcheſter*, in the County of *Eſſex*, Clothier, before the ſpeaking and publiſhing the ſaid falſe and ſcandalous Words hereafter mentioned to and of the ſaid *Margaret*, (that is to ſay) on the firſt Day of *April*, in the twelfth Year of his preſent Majeſty's Reign, at *Askrigg* aforeſaid, with great Fervency, and proteſtations of Love and Sincerity, ſolicited the ſaid *Margaret* to conſent to be his Wife: Neverthertheleſs the ſaid *James*, of his meer wicked Malice had, againſt the ſaid *Margaret*, contriving, and maliciouſly intending not only to injure and detract her, in her good Name, Character and Reputation, and to bring her into Infamy and Diſgrace, and (as much as in him lay) to deprive her of her Marriage, but alſo to ſubject her to undergo the Penalties and Puniſhments, that are provided by the Laws of this Kingdom, for Perſons guilty of Perjury, on the 2d Day of *June*, in the 12th Year of the Reign of his preſent Majeſty, at *Askrigg* aforeſaid, in the Preſence and Hearing of ſeveral of his Majeſty's Subjects, loudly and publickly ſpoke to, repeated, pronounced, and publiſhed of the ſaid *Margaret* (then and yet being a ſole unmarried, pure, chaſte, and honeſt Virgin) theſe falſe, ſcandalous, opprobrious, and lying Words following, *You* (meaning the ſaid *Margaret*) *are a Whore, and a forſworn Jade, and I* (meaning the ſaid *James*) *will prove you one*; by means of ſpeaking, repeating, proclaiming and publiſhing of which falſe, ſcandalous and opprobrious Words, ſhe the ſaid *Margaret* fell into great Infamy and Scandal with ſeveral Worthy Perſons, Subjects to our Sovereign Lord the King, with whom the ſaid *Margaret* was before that Time in great Favour and Eſteem; and alſo thereby many young Men, who before, had ſolicited her in Marriage, afterwards neglected and refuſed ſo to do; and in Particular the ſaid *A. B.* of great Credit and Reputation, who before the ſaid Time of ſpeaking the ſaid ſcandalous Words, had with great Fervency and Love, ſolicited the ſaid *Margaret* to be join'd in Matrimony with him, for the Reaſon above, altogether refus'd and deſpiſed the Company and Converſation of the ſaid *Margaret*, and always afterwards hitherto hath, and ſtill doth refuſe to be married to the ſaid *Margaret*;

Margaret; whereby the ſaid *Margaret* hath not only loſt, and been depriv'd of her Credit and Reputation, but hath alſo loſt her Preferment by Marriage, and is thereby otherwiſe greatly injured in doing her lawful and honeſt Affairs, to the Damage of the ſaid *Margaret* 300 *l.* and therefore ſhe brings this Suit, *and ſo forth.*

Note; In *Lut.* 1296, it was adjudged that the Declaration there was ill, becauſe it was not ſaid with whom the Plaintiff loſt her Marriage; therefore you may perceive I have alter'd the Preſident.

For not repairing of a Meſſuage, &c. purſuant to Promiſe.

Whereas the ſaid *A.* on the 10th Day of *Auguſt*, in the ſixth Year of the Reign of his preſent Majeſty, was ſeized of and in one Meſſuage, called or known by the Name of the *Lamb*, with the Appurtenances in *M.* in the ſaid County, in his Demeſne as of Fee; and being ſo ſeized thereof, a certain Diſcourſe was had and aroſe between the ſaid *B.* and *A.* of and concerning a Demiſe of the ſame, to be made to the ſaid *B.* by the ſaid *A.* upon which ſaid Diſcourſe the ſaid *A.* the ſame Day and Year at *M.* aforeſaid, in Conſideration, that the ſaid *B.* at the ſpecial Inſtance and Requeſt of the ſaid *A.* would accept of a Leaſe from the ſaid *A.* of the ſaid Meſſuage, for the Term of fourteen Years, under the yearly Rent of twenty Pounds, of lawful Money of *Great Britain*, to be paid yearly during the ſaid Term to the ſaid *A.* by the ſaid *B.* at the *Feaſts of the Annunciation of the Bleſſed Virgin Mary*, and St. *Michael the Archangel*, by equal Portions, he the ſaid *A.* undertook, and then and there faithfully promiſed the ſaid *B.* that he the ſaid *A.* would well and ſufficiently repair the ſaid Meſſuage, with the Appurtenances then being in Decay and out of Repair, within eight Months then next following, at his own proper Coſts and Charges; and although the ſaid *A.* afterwards, (that is to ſay) on the 20th Day of *Auguſt*, in the ſaid Year, at *M.* aforeſaid, demiſed the ſaid Meſſuage, with the Appurtenances to the ſaid *B.* for the Term of fourteen Years, under the yearly Rent of twenty Pounds of lawful Money of *Great Britain*, to be paid by the ſaid *B.* to the ſaid *A.* yearly during the ſaid Term, at the ſaid Feaſts, by equal Portions; of which ſaid Demiſe the ſaid *B.* accepted and held, and occupied the ſaid Meſſuage, with its Appurtenances, for a Year and Half then next following, by Virtue of the ſaid Demiſe; and although the ſaid *B.* at the ſaid ſeveral Feaſts, paid the ſaid *A.* the ſaid Sum of 30 *l.* for Rent for the Time aforeſaid, purſuant to his ſaid Agreement: Neverthelеſs the ſaid *A.* having no Regard to his ſaid Promiſe and Undertaking, but contriving, and fraudulently intending, craftily and ſubtilly to deceive and defraud him the ſaid *B.* in this Particular, within eight Months then next following, did not repair the ſaid Meſſuage, which at the Time of the ſaid Promiſe and Undertaking was decay'd, and out of repair, (that is to ſay) in the Roof of the ſaid Meſſuage, for want of Tiling, whereby the Timber, by the Tempeſts of Rain deſcending upon it, became putrid, and corrupt, *&c.* alſo in the Windows of the ſaid Meaſſuage, for want of Glaſs, with the Appurtenances, according to his ſaid Promiſe and Undertaking, but hitherto hath, and ſtill doth refuſe to repair the ſame, to the Damage of the ſaid *B.* fifty Pounds; and and thereupon he brings this Suit, *and ſo forth.*

Benſon againſt **Muſgrove.**

Trinity the Second of King *James* the Second. *Roll* 1652.

Lut. 71, 72.

Cumberland. Richard Muſgrove, late of *Hayton Caſtle* in the ſaid County, Baronet, the late Sheriff of the ſaid County of *Cumberland*, was attached to anſwer to *John Benſon*, Gentleman, in an Action of *Treſpaſs upon the Caſe*; and whereupon the ſaid *John*, by *Francis Catterſon* his Attorney complains, that whereas the ſaid *John*, in the Term of St. *Hillary*, in the firſt Year of the Reign of our Sovereign Lord the King, duly proſecuted out of his Majeſty's Court of Common Pleas at *Weſtminſter*, in the County of *Middleſex*, his Majeſty's Writ of Capias, *or for taking the Body of a Defendant, to anſwer to the Plaintiff's ſuing out the ſame*, againſt *Ralph Hayes* of *Egermon*, in the ſaid County of *Cumberland*, *Yeoman*, directed to the ſaid Sheriff of the ſaid County of *Cumberland*, by which ſaid Writ, our ſaid Sovereign Lord the King Commanded the then Sheriff of the ſaid County of *Cumberland*, that he ſhould take the ſaid *Ralph*, if he could be found in his Bailiwick, and ſafely keep him, ſo that he might have his Body before his Majeſty's Juſtices at *Weſtminſter*, on the Morrow of the *Aſcenſion of our Lord*, to anſwer to the ſaid *John Benſon* in an Action, wherefore he had broke the Cloſe of the ſaid *John* at *Penrith* with Force and Arms, and brought other Injuries on him, to the great Damage of the ſaid *John*, and againſt the Peace of our Sovereign Lord the King; and alſo to anſwer to the ſaid *John*, according to the Cuſtom of the ſaid Court of Common Pleas, in an Action for a Debt upon a Demand of 33 *l.* which ſaid Writ of our ſaid Sovereign Lord the King, ſued out in the Manner as above, afterwards, (that is to ſay) on the 13th Day of *April*, in the ſaid firſt Year at *Cockermouth*, he the ſaid *John* delivered to the ſaid *Richard* (he then being the Sheriff of the County of *Cumberland*) to be executed in due Form of Law, by Virtue of which ſaid Writ, afterwards, and before the Return of the ſame, (that is to ſay) on the 16th Day of *April*, in the ſaid firſt Year, he the ſaid *Richard* took and arreſted the ſaid *Ralph*, being found in his Bailiwick, (that is to ſay) at *Cockermouth* aforeſaid, and then and there had the ſaid *Ralph* in his Cuſtody, by Virtue of the ſaid Writ. Nevertheleſs the ſaid *Richard* having no Regard to the Duty of his Office of Sheriff, but contriving, and fraudulently intending, unjuſtly to grieve the ſaid *John* in this Particular, or at leaſt to give him great Delay in his Suit, afterwards, and before the Return of the ſaid Writ, (that is to ſay) on the 20th Day of *April*, in the ſaid firſt Year, permitted the ſaid *Ralph*, being detained for the Reaſons above, to eſcape out of the Cuſtody of the ſaid *Richard* (then Sheriff of the ſaid County of *Cumberland*) without the leave, and againſt the Will of the ſaid *John*, and to go at Large, where-ever he would (that is to ſay) at *Cockermouth* aforeſaid; he the ſaid *John*, not having had any Satiſfaction for his ſaid Debt of 33 *l.* whereby the ſaid *John* is manifeſtly delay'd and depriv'd of his proper Remedy, for Recovering and Obtaining his ſaid Debt, and is very likely to loſe the ſame, to the Damage of the ſaid *John* 40 *l.* and therefore he brings this Suit.

Stanton againſt James.

An Action upon the Caſe for an Eſcape of one taken upon a Capias utlagatum before Judgment.

London. *Cane James*, late of the Pariſh of St. *Giles in the Fields*, in the County of *Middleſex*, Baronet, late Sheriff of the County of *Eſſex*, was attach'd to anſwer to *Stephen Stanton*, Gent. (*who ſues in this Caſe, as well for our Sovereign Lord the King, as for himſelf*) in an Action of Treſpaſs on the Caſe; and whereupon the ſaid *Stephen* (*who ſues in this Caſe, as well for our Sovereign Lord the King as for himſelf*) by *John Wade* his Attorney, complains, that whereas the ſaid *Stephen*, in the Term of St. *Michael*, in the 5th Year of the Reign of his preſent Majeſty, impleaded one *Thomas Nightingale*, Baronet, in his Majeſty's Court of Common Pleas, before his Majeſty's Juſtices of the ſame Court, at *Weſtminſter*, in the County of *Middleſex*, in an Action, that he ſhould render to the ſaid *Stephen* two hundred Pounds, which he then owed to, and unjuſtly detained from him as he aſſerted; and the ſaid *Thomas*, in as much as he did not come into the ſaid Court, before his ſaid Majeſty's Juſtices, to anſwer to the ſaid *Stephen*, according to the Law and Cuſtoms of this Kingdom of *Great Britain*, had been put in exigent to be outlaw'd; and afterwards, (that is to ſay) on *Monday* next after the Feaſt of St. *Mark* the *Evangeliſt*, in the ſixth Year of the Reign of his preſent Majeſty, was outlaw'd in *London*, as by the Record and Proceedings thereof, now remaining in his Majeſty's Court of Common Pleas at *Weſtminſter*, more plainly may appear. And whereas alſo afterwards, (that is to ſay) on the 12th Day of *February*, in the ſaid ſixth Year of the Reign of his preſent Majeſty, for a more ſpeedy Recovery of the ſaid Debt, the ſaid *Stephen* (*who ſues in this Caſe, as well for our Sovereign Lord the King, as for himſelf*) ſued and proſecuted out of his ſaid Majeſty's Court of Common Pleas, his Majeſty's Writ of *Capias utlagatum* (or for taking the Body of Perſons outlaw'd) againſt the ſaid *Thomas*, directed to the then Sheriff of the County of *Eſſex*, whereby our ſaid Sovereign Lord the King Commanded the ſaid Sheriff of *Eſſex*, that he ſhould not omit, by Reaſon of any Liberty in his County, but that he ſhould enter therein, and take the ſaid *Thomas* (*outlaw'd in* London, *on the* Monday *after the Feaſt of St.* Mark *the* Evangeliſt, *in the fifth Year of the Reign of his preſent Majeſty, at the Suit of the ſaid* Stephen *in an Action of Debt*) if he could have been found in his Bailiwick; and that he ſhould ſafely keep him, ſo that he might have his Body here within fifteen Days from the Day of the Feaſt of *Eaſter* then next following, to do and receive that which the Court of our ſaid Sovereign Lord the King, ſhould conſider of in that Particular; and that he ſhould have there that Writ; which ſaid Writ, he the ſaid *Stephen* (*who ſues in this Caſe, as well for our Sovereign Lord the King as for himſelf*) afterwards, and before the Return of the ſame, (that is to ſay) on the 12th Day of *April*, in the ſaid fifth Year at *Chelmſford*, in the ſaid County of *Eſſex*, deliver'd to the ſaid *Cane James*, (he then being the Sheriff of the ſaid County) to be executed in due Form of Law; and the ſaid *Cane James*, afterwards (that is to ſay) on the ſame 12th Day of *April*, in the ſaid fifth Year, (he the ſaid *Cane* then being the Sheriff of the ſaid County of *Eſſex*) took the ſaid *Thomas Nightingale* at *Chelmsford* in the ſaid County, by Virtue of the ſaid Writ directed to the ſaid *Cane James* then Sheriff of the ſaid County aforeſaid, and then and there had the ſaid *Thomas* in his Cuſtody. Nevertheleſs the ſaid *Cane James* being Sheriff of the ſaid County of *Eſſex*, paying no manner of Regard to the Duty of his ſaid Office of Sheriff, but contriving, not only to deceive and defraud our ſaid Sovereign Lord the King, of what belong'd to him, by reaſon of the ſaid *Outlawry*, but alſo to delay the ſaid *Stephen* (*who ſues in this Caſe, as well for our Sovereign Lord the King as for himſelf*) in proſecuting the ſaid Suit, afterwards, (that is to ſay) on the 20th Day of *April* in the ſaid fifth Year, without any Precept from our Sovereign Lord the King, and without the Leave, and againſt the Will of the ſaid *Stephen*, permitted the ſaid *Thomas* (being outlaw'd and detain'd in his Cuſtody in the Manner as above) to eſcape out of the County of him the ſaid *Cane*, then Sheriff of the ſaid County of *Eſſex*, and go at large where-ever he pleas'd, (our ſaid Sovereign Lord the King not having had any Satiſfaction for what belonged to him; and the ſaid *Stephen* not having had any Satiſfaction for his ſaid Debt, or any wiſe precluded therefrom, by any Judgment of the ſaid Court) in Contempt of our ſaid Sovereign Lord the King, and to the Deriſion of the ſaid Court, and to the great Damage and Injury of the ſaid *Stephen*, in manifeſtly delaying and hindring him in proſecuting the ſaid Suit; and the ſaid *Thomas* is now not to be found, but lurks and wanders up and down in Places unknown to the ſaid *Stephen*, and cannot be taken or arreſted, to the Damage of the ſaid *Stephen* three hundred Pounds; and therefore he brings this Suit, *and ſo forth.*

Note; this Precedent was taken from *Lut.* 109. the Title of which is *Cook Paſchæ* the Third of King *James* the Second, *Roll* 361. and there the Plaintiff ſets forth the Nature of his Debt upon which he outlaw'd the Defendant, that it was upon a Bond, which being ſaid by *Lut.* to be needleſs, and ſeveral Caſes were there cited by him, which proved it ſo to be; therefore I have here omitted it; and in that Precedent, the Plaintiff in reciting the *Outlawry*, had not ſaid *as appears by the Record*, &c. and a Multitude of Precedents being in that Manner, I have, as you may perceive, made this Precedent ſo.

Whitrow againſt **Edwin** and others.

Trinity the Third of King *William* and Queen *Mary.*

Middleſex. Sir *Humphrey Edwin*, late of *London*, Knt. and Sir *John Fleet*, late of *London*, Knt. late Sheriff of the County of *Middleſex*, was attach'd to anſwer to *John Whitrow*, Merchant, in an Action of *Treſpaſs upon the Caſe*; and thereupon *J. W.* by *N. R.* his Attorney complains, that whereas one *Edward Thynn* a Merchant, and *James Thynn* a Merchant, in the Life-time of the ſaid *Edward*, (that is to ſay) on the firſt Day of *May* in the Year of our Lord 1689, ſtated an Account together with the ſaid *John W.* of divers Sums of Money before that Time due and unpaid by the ſaid *E.* and *J.* to the ſaid *John*; and upon the Stating of the ſaid Account, the ſaid *E.* and *J.* were found to be in Arrear to the ſaid *John*, in 2602 *l.* 18 *s.* 6 *d.* of *Spaniſh* Money, amounting at that Time to 581 *l.* 1 *s.* 6 *d.* of lawful Money of *England*, (*which muſt now be ſaid of lawful Money of* Great Britain) and being ſo found in Arrear, he the ſaid *E.* afterwards, (that is to ſay) on the Day and Year aforeſaid, died at the Pariſh of St. *Andrew Holbourn*, in the County aforeſaid; and the ſaid *James* ſurvived him, (the ſaid 581 *l.* 1 *s.* 6 *d.* not having been paid to the ſaid *J. W.*) and the ſaid *J. W.* in order to recover the ſaid 581 *l.* 1 *s.* 6 *d.* afterwards, (that is to ſay) in the firſt Year of the Reign of our Sovereign Lord and Lady the King and Queen, proſecuted their Majeſty's ſaid Writ of *Capias*, out of their Majeſty's Court of Common Pleas, againſt the ſaid *James Thynn*, directed to the then Sheriff of the City of *Exeter*, by which ſaid Writ, the ſaid Sovereign Lord and Lady the King and Queen, commanded the ſaid Sheriff of the City of *Exeter*, that he ſhould take the ſaid *James Thynn*, by the Name of *James Thynn, late of* Hackney, *in the County of* Middleſex, *Merchant*, if he could be found in his Bailiwick, and that he ſhould ſafely keep him, ſo that the ſaid Sheriff might have his Body before their Majeſty's Juſtices at *Weſtminſter, in three Weeks from the Day of the Holy Trinity* then next following, to anſwer to the ſaid *J. W.* in an Action, wherefore with Force and Arms he had broke the Cloſe of the ſaid *J. W.* at the ſaid City of *Exeter*, and had done him other Wrongs, to the great Damage of the ſaid *J. W.* and againſt the Peace of our ſaid Sovereign Lord and Lady the King and Queen; and alſo that the ſaid *James* ſhould anſwer to the ſaid *J. W.* according to the Cuſtom of their Majeſties Court of Common Pleas, in a certain Action of *Treſpaſs upon the Caſe, upon a Promiſe unperformed*, to the Damage of the ſaid *J. W.* 500 *l.* and that he ſhould have there that ſame Writ; at which Day the then Sheriff of *Exeter*, that is to ſay) *Edward Seaward*, Eſq; made a Return thereon to their ſaid Majeſties Juſtices, that the ſaid *James* was not to be found in his Bailiwick; whereupon it was ſufficiently teſtified in the ſaid Court of our ſaid Sovereign Lord and Lady the King and Queen, that the ſaid *James* was lurking and wandring up and down in the County of *Middleſex*; and therefore the ſaid *J. W.* on the 19th Day of *June*, in the ſaid firſt Year, proſecuted out of their ſaid Majeſties Court of Common Pleas their ſaid Majeſties Writ of *Capias*, againſt the ſaid *James Thynn*, directed to the then Sheriff of the County of *Middleſex*; by which ſaid Writ, our ſaid Sovereign Lord and Lady the King and Queen Commanded the ſaid Sheriff of the ſaid County of *Middleſex*, that he ſhould take the ſaid *J. T.* by the Name of *J. T.* late of *Hackney*, in the County of *Middleſex*, Merchant, if he could be found in his Bailiwick, and ſafely keep him, ſo that the ſaid Sheriff might have his Body before their Majeſties Juſtices at *Weſtminſter*, in three Weeks, from the Day of the *Holy Trinity* then next following, to anſwer to the ſaid *J. W.* in an Action, wherefore with Force and Arms he had broken the Cloſe of the ſaid *J. W.* at *Exeter*, and done him other Wrongs, to the Damage of the ſaid *J. W.* and againſt the Peace of our ſaid Sovereign Lord and Lady the King and Queen; and alſo, that the ſaid *James* ſhould anſwer to the ſaid *J. W.* according to the Cuſtom of their Majeſties Court of

An Account ſtated.

Recital of the Writ of Capias.

The Return.

Recital of a Teſtatum **to the Sheriff of Middleſex.**

Common Pleas, in an Action of *Treſpaſs upon the Caſe*, on *a Promiſe unperform*'d, to the Damage of the ſaid *J.W.* 500*l.* and whereupon the ſaid Sheriff of the ſaid City of *Exeter*, had made a Return to their ſaid Majeſties Juſtices, *in three Weeks from the Day of the Holy Trinity* then laſt paſt, that the ſaid *James* was not to be found in his Bailiwick; whereas it was ſufficiently teſtified in the ſaid Court of our ſaid Sovereign Lord and Lady, the King and Queen, that the ſaid *James* was lurking and wandering up and down in the ſaid County of *Middleſex*; which ſaid Writ, directed to the ſaid Sheriff of the ſaid County of *Middleſex*, afterwards, (that is to ſay) on the 20th Day of *Auguſt*, in the ſaid firſt Year, was delivered to the ſaid *Humphrey*, and to *John Fleet*, then being the Sheriff of the ſaid County of *Middleſex*, at the ſaid Pariſh of St. *Andrew Holbourn*, to be executed in due Form of Law, by Virtue of which ſaid Writ, the ſaid *Humphrey* and *John Fleet*, then being the Sheriff of the ſaid County of *Middleſex*, afterwards, and before the Return of the ſaid Writ, (that is to ſay) on the 23d Day of *Auguſt*, in the ſaid firſt Year, took the ſaid *James* at the ſaid Pariſh of St. *Andrew Holbourn*, and arreſted him, and had and detain'd him in their Cuſtody, for the Reaſon above-mentioned, for the Space of two Days and Upwards: Nevertheleſs the ſaid *Humphrey* and *John Fleet*, (*then being the Sheriff of the ſaid County of* Middleſex, paying no Regard to the Duty of their ſaid Office of Sheriff, and to the Oath they had taken for the due Execution of the ſame, but contriving, and fraudulently intending to deceive and defraud the ſaid *J. W.* of the ſaid Sums of Money, and of the Benefit and Advantage of his ſaid Suit, afterwards (that is to ſay) on the 27th Day of *Auguſt*, in the ſaid firſt Year, permitted the ſaid *James* (ſo being in their Cuſtody, in the Manner and for the Reaſons above) to go whither he would, and eſcape out of their Cuſtody, without any Precept of our ſaid Sovereign Lord and Lady the King and Queen, and without the Conſent, and againſt the Will of the ſaid *J. W.* (that is to ſay) at the ſaid Pariſh of St. *Andrew Holbourn*, (the ſaid Sum of 581 *l.* 1 *s.* 6 *d.* remaining unpaid to the ſaid *J.W.*) and that the ſaid *James* hath ever ſince abſconded, and withdrawn himſelf to Places altogether unknown to the ſaid *J. W.* ſo that the ſaid *James* could not be retaken by any of their Majeſties Proceſs; and therefore the ſaid *J. W.* hath not only loſt, and been deprived of the ſaid 581 *l.* 1 *s.* 6 *d.* but alſo of all the Benefit and Advantage of his ſaid Suit, to the Damage of the ſaid *J.W.* 500 *l.* and therefore he brings this Suit, *and ſo forth*.

Sets forth the Eſcape.

Trover by an Adminiſtrator. This Precedent is taken from 2 Saund. 138. only alter'd mutatis mutandis, to bring it down to his preſent Majeſty's Reign.

Eſſex. Alexander Davis, Adminiſtrator of all and ſingular the Goods and Chattels, Rights and Credits of *Edmund Spicer* lately deceaſed, complains of *Edward Turner*, being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, before the King himſelf, for this Cauſe, (that is to ſay) that whereas the ſaid *Edmund* in his Life-time, (that is to ſay) on the firſt Day of *July*, in the 6th Year of the Reign of our Sovereign Lord, *George* the Second, King of *Great Britain, and ſo forth*, at the Pariſh of *Barking*, in the ſaid County of *Eſſex*, was poſſeſs'd of one Bed, one Bedſtead, (*ſo reciting the Goods*) of the Value of 50 *l.* as of his own proper Goods and Chattels, and being ſo poſſeſs'd thereof, afterwards, (that is to ſay) on the ſaid firſt Day of *July*, in the ſaid ſixth Year, the ſaid *Edmund* died at *Barking* aforeſaid, in the ſaid County; after whoſe Death the ſaid Goods and Chattels came to the Hands and Poſſeſſion of the ſaid *Edward*, by his finding the ſame; and afterwards, (that is to ſay) on the 21ſt Day of *July*, in the ſaid ſixth Year, Adminiſtration of all and ſingular the Goods and Chattels, Rights and Credits, which had been the Property of the ſaid *Edmund Spicer* at the Time of his Death, was in due manner granted to the ſaid *Alexander*, as to the principal Creditor of the ſaid *Edmund*, by *T. E.* Doctor of Laws, the Official Surrogate, lawfully (conſtituted (to the Worſhipful *William Wells* Doctor of Divinity, Archdeacon of the Archdeaconry of *Colcheſter*; and the ſaid *Edward*, altho' he very well knew the ſaid Goods and Chattels were the Property of the ſaid *Edmund*, in his Life-time, and at the Time of his Death, and of Right to belong to the ſaid *Alexander*, after the Deceaſe of the ſaid *Edmund*, by Reaſon of the ſaid Adminiſtration; nevertheleſs contriving, and fraudulently intending, craftily and ſubtilly to defraud the ſaid *Alexander*, in this Particular, of the ſaid Goods and Chattels, altho' the ſaid *Edward* was by the ſaid *Alexander*, afterwards, (that is to ſay) on the firſt Day of *September*, in the ſaid ſixth Year at *Barking* aforeſaid, in the ſaid County, required to deliver the ſame; yet the ſaid *Edward* hath not delivered the ſaid Goods and Chattels to the ſaid *Alexander*; but he the ſaid *Edward*, afterwards, (that is to ſay) on the ſaid firſt Day of *September*, in the ſaid ſixth Year, converted the ſame to his own Uſe and Behoof at *Barking* aforeſaid, in the ſaid County of *Eſſex*, to the Damage of the ſaid *Alexander* 50 *l.* and therefore he brings this Suit, *and ſo forth*; and brings here into Court the Letters of Adminiſtration, which teſtifie the Commiſſion of the ſaid Adminiſtration in the Manner as above; the Date whereof is the ſame Day and Year for that Purpoſe above ſpecified.

Note; In a Declaration in *Trover*, you muſt always ſet forth the Value of the Goods; and if the Action is brought for Things that are animate, then it is proper to ſay of the Price of ſo much Money.

Cunninſby againſt **Rodd.**

Michaelmas the Third of King *James* the Second. *Roll* 833.

1 Lut. 229. **A Declaration upon a ſpecial Agreement relating to Tithes.**

Hereford. Hugh Rodd, late of the City of *Hereford*, *Mercer*, was attach'd to anſwer to *Thomas Cunninſby*, Eſq; in an Action of *Treſpaſs upon the Caſe, and ſo forth*: And whereupon the ſaid *Thomas* by *Hen. Baldwin* his Attorney complains, that whereas on the firſt Day of *December*, in the 30th Year of the Reign of his late Majeſty *Charles* the Second, late King of *England*, *and ſo forth*, (which now muſt be called *Great Britain*) at *Marden* in the ſaid County, a certain Diſcourſe happen'd and aroſe between the ſaid *Thomas Cunningſby*, and the ſaid *Hugh Rodd*, of and concerning the Tithes yearly growing and renewing of and from a certain Meadow called *Gundey Meadow*, at *Marden* aforeſaid; and upon ſuch Diſcourſe, the ſaid *Thomas* then and there affirmed, that he was ſeized of the ſaid Tithes, and was the Proprietor thereof, which the ſaid *Hugh* then and there deny'd; and thereupon it was then and there agreed between the ſaid *Thomas*, and the ſaid *Hugh*, in the Manner following, (that is to ſay) that the ſaid *Hugh* ſhould continue to gather and receive to his own Uſe the Tithes growing and renewing of and from the ſaid Meadow; and that if the ſaid *Thomas* ſhould recover againſt the ſaid *Hugh* his Damages in any Action, to be proſecuted by the ſaid *Thomas* againſt the ſaid *Hugh* for any Tithes, growing and renewing of and from the ſaid Meadow; then the ſaid *Hugh* ſhould well and truly pay to the ſaid *Thomas* the yearly Sum of 20 *s.* of lawful Money of *England* (which muſt be now ſaid of *Great Britein*) for every Year, in which the ſaid *Hugh* ſhould gather and receive the ſaid Tithes to his own Uſe; and thereupon the ſaid *H.* afterwards, (that is to ſay) on the firſt Day af *December*, in the ſaid 30th Year, at *Marden* aforeſaid, in Conſideration, that the ſaid *Thomas* had Undertaken, and then and there faithfully promiſed the ſaid *Hugh*, that he the ſaid *Thomas* would well and truly perform and fulfil the ſaid Agreement in every Particular on his Part to be performed, he the ſaid *Hugh* undertook, and then and there faithfully promiſed the ſaid *Thomas*, that he the ſaid *Hugh* would well and truly perform and fulfil the ſaid Agreement in every Particular on his Part to be perform'd. And the ſaid *Thomas* in Fact declares, that he the ſaid *Thomas* afterwards, (that is to ſay) in *Michaelmas* Term in the 36th Year of the Reign of his ſaid late Majeſty *Charles* the Second King of *England*, (which muſt now be call'd *Great Britain*) impleaded the ſaid *Hugh* in his Majeſty's Court of Common Pleas at *Weſtminſter*, in the County of *Middleſex*, by an Original Writ of the ſaid late King, in an Action of Treſpaſs, for the Taking and Carrying away the ſaid Tithes, growing and renewing in and from the ſaid Meadow, in the ſaid 36th Year of the Reign of the ſaid late King; and that thereupon ſuch Proceeding was had in the ſaid Court, that afterwards (that is to ſay) in *Eaſter* Term, in the Second Year of the Reign of his preſent Majeſty *James* the Second, King of *England*, *and ſo forth*, the ſaid *Thomas* by the Conſideration of the ſame Court, recovered againſt the ſaid *Hugh* 2 *d.* for his Damages, for taking and carrying away the ſaid Tithes growing and renewing as aforeſaid, of and from the ſaid Meadow; and that the ſaid *Hugh*, for the Space of ſix Years next enſuing the making the ſaid Agreement, gather'd and received the ſaid Tithes to his own Uſe. And whereas alſo, afterwards (that is to ſay) on the firſt Day of *December*, in the ſaid 30th Year of the Reign of his ſaid late *Majeſty*, in Conſideration that the ſaid *Thomas*, at the ſpecial Inſtance and Requeſt of the ſaid *Hugh*, would permit him to gather and receive the Tithes, growing and renewing of and from the ſaid Meadow to his own Uſe, the ſaid *Hugh* then and there undertook, and faithfully promiſed the ſaid *Thomas*, that he the ſaid *Hugh* would well and truly pay to the ſaid *Thomas* other 20 *s.* of like lawful Money for every Year, in which the ſaid *Hugh* ſhould ſo gather the ſaid Tithes to his own Uſe; and the ſaid *Thomas* in Fact declares, that he the ſaid *Thomas* giving Credit to the Promiſe and Undertaking of the ſaid *Hugh* laſt above-mentioned, permitted the ſaid *Hugh* to gather, and receive to his own Uſe the ſaid laſt mentioned Tithes, from the ſaid firſt Day of *December*, in the ſaid 30th Year, for the Space of ſix Years next enſuing. And whereas

Mutual Promiſes of Performance.

Averment of Performance.

as alſo the ſaid *Hugh*, afterwards (that is to ſay) on the firſt Day of *Auguſt*, in the 2d Year of the Reign of his ſaid preſent Majeſty at *Marden* aforeſaid, in Conſideration that the ſaid *Thomas*, at the like Inſtance and Requeſt of the ſaid *Hugh*, had permitted the ſaid *Hugh* to gather and receive to his own Uſe, for the Space of ſix Years then laſt paſt, other Tithes of the ſaid *Thomas*, growing and renewing of and from the ſaid Meadow, called *Gundey Meadow*; the ſaid *Hugh* undertook, and faithfully promiſed the ſaid *Thomas*, that he the ſaid *Hugh* would well and truly pay to the ſaid *Thomas* other 20 *s.* of like lawful Money, for every Year of the ſaid ſix Years; nevertheleſs the ſaid *Hugh*, having no Regard to his ſaid ſeveral Promiſes and Undertakings, but contriving, and fraudulently intending, craftily and ſubtilly to deceive and defraud the ſaid *Thomas* in this Particular, hath not yet paid the ſaid *Thomas* the ſaid Money, or any Part thereof, but hitherto hath, and ſtill doth refuſe ſo to do, to the Damage of the ſaid *Thomas* 20 *l.* and therefore he brings this Suit, and hath ſufficient Proof of the Premiſſes.

An Exception was ſaid to be taken to the third Count in the Declaration, *viz.* that it was a Promiſe made to do a Collateral Act, where there was not any Duty created before; but as the Duty commenced with the Promiſe, therefore a Special Requeſt ought to have been alledged; and for that Purpoſe the following Caſes were cited. *Oltarſton* and *Garton*'s Caſe, 3 *Cro.* 91. *Stile* 49. *Parmitor*'s Caſe, 1 *Brownl.* 13. *Gore* and *Calthrop.*

But thereto it was anſwer'd by the Court, that when a Promiſe is to do a Collateral Thing upon Requeſt, a Special Requeſt ought to be alledged; but otherwiſe where the Thing is not to be done upon Requeſt, according to the following Caſes. *Hill* and *Wade*'s Caſe, 2 *Cro.* 523. *Eſtrigge* and *Owen*'s Caſe, 3 *Leon.* *Winch* 102, & 103. *Jones* 56. *Love* againſt *Kirby*, and *Peck* and *Methwold*'s Caſe, *Jones* 85. *Cro. Car.* 385. *Palmer* and *Knight*'s Caſe, 2 *Ven.* 74, 75.

Corryton againſt Lithebye.

Eaſter the Twenty-ſecond of King *Charles* the Second. *Roll* 331.

Cornwall. Be it remember'd that heretofore, (that is to ſay) in the Term of St. *Michael* laſt paſt, Sir *John Corryton*, Baronet, and *Richard Harvey* by *Richard Goodenough* their Attorney, came before our Sovereign Lord the King at *Weſtminſter*, and brought here into this Court of our ſaid Sovereign Lord the King, their Bill againſt *John Lithebye*, being in the Cuſtody of the Marſhal of the *Marſhalſey* of our ſaid Sovereign Lord the King, before the King himſelf, in an Action of *Treſpaſs on the Caſe*; and there are Pledges for the Proſecution, (to wit) *John Doe* and *Richard Roe*; which ſaid Bill follows in theſe Words. *Cornwall.* Sir *John Corryton*, Baronet, and *Richard Harvey* complain of *John Lithebye*, being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, before the King himſelf, for this Cauſe, (that is to ſay) that whereas one *William Findge*, on the 20th Day of *July* in the 9th Year of the Reign of our late

Sovereign Lord *Charles* the Firſt, late King of *England*, *and ſo forth*, was ſeized in his Demeſne as of a Fee, of and in two Water Corn-Mills, under one Roof called *Caſtor-Mills*, within the Manor of *Calliland* in the ſaid County; and whereas the ſaid *John Corryton*, on the 20th Day of *April*, in the Year of our Lord 1656, was, and ever ſince hath been, and now is ſeized in his Demeſne, as of a Fee, of two other Water Corn-Mills, under one Roof called *Frogwell-Mills*, in the ſaid Manor: And whereas, as well the ſaid *John Corryton*, as the ſaid *William Findge*, and all others, whoſe Eſtate they reſpectively have in the ſaid Mills, for ſo long a Time as that there is no Remembrance of any Man to the Contrary, have from Time to Time ſufficiently repaired and amended the ſaid Mills at their own Coſts and Charges, ſeverally and reſpectively, and kept the ſame in Repair for grinding of all manner of Corn and Grain, of all the Tenants, Inhabitants within the ſaid Manner, *which they had to be ground*, and to be by them uſed and conſumed in their Houſes within the ſaid Manor; and alſo during all the ſaid Time, have kept and maintained Millers to grind ſuch Corn and Grain into Meal; and in Conſideration thereof, they the ſaid *John Corryton*, and *William Findge*, and all thoſe whoſe Eſtate they reſpectively have of and in the ſaid reſpective Mills, for ſo long a Time, that there is no Remembrance of any Man to the Contrary, have uſed, and been accuſtomed to grind at the ſaid Mills, or one of them, all the Corn and Grain into Meal, of all the Tenants of the ſaid Manor of *Calliland*, Inhabitants within the ſaid Manor uſed and conſum'd by them in their ſaid Houſes within the ſaid Manor; (*that is to ſay*) *ſuch of the Corn and Grain of the ſaid Tenants, Inhabitants within the ſaid Manor, as have not been uſed to be ground at the ſaid Mills, called* Frogwell-Mills, *ought, and during the Time aforeſaid, have been uſed and accuſtomed to be ground at the ſaid Mills called* Caſtor-Mills; *and all the Corn and Grain of the ſaid Tenants, Inhabitants within the ſaid Manor, as have not, during the Time aforeſaid, been ground at the ſaid Mills called* Caſtor-Mills *ought to be, and during all the Time aforeſaid have been uſed and accuſtomed to be ground at the ſaid Mills, called* Frogwell-Mills; and have received and taken, for the Grinding of every Buſhel of the ſaid Corn and Grain ſo ground, one Gallon of and from every Buſhel of the ſaid Meal ground and made from ſuch Corn and Grain; and ſo in Proportion for a greater or leſſer Quantity, by way of Toll for grinding the ſame. And the ſaid *William Findge* being ſeized of his ſaid Mills, called *Caſtor-Mills*, he the ſaid *William*, on the ſame 20th Day of *July*, in the ninth Year of the Reign of our ſaid late Sovereign Lord King *Charles* the Firſt, at *Launceſton* in the ſaid County, demiſed his ſaid Mills to the ſaid *R. Harvey*, for the Term of ninety-nine Years, if *Sampſon Harvey*, *Agnes Harvey*, and *Sampſon Brent*, or either of them ſhould ſo long live; by Virtue of which ſaid Demiſe, the ſaid *Richard* entered into the ſaid Mills called *Caſtor-Mills*, and thereby was, and now is poſſeſſed thereof. And whereas the ſaid *John Lithebye*, was on the 20th Day of *April*, in the Year of our Lord 1651, and ever ſince hath been, and now is a Tenant of the ſaid Manor, and poſſeſs'd of a Dwelling-houſe therein, in which the ſaid *John Lithebye* inhabited during all that Time: Nevertheleſs the ſaid *John Lithebye* not being ignorant of the Premiſſes, but contriving, and fraudulently intending to deceive and defraud the ſaid *John Corryton* and *Richard Harvey* of the Profits which ſhould have ariſen to the ſaid *John* and *Richard*, by grinding the Corn and Grain of the ſaid *John Lithebye*, which he had to be ground and uſed, and conſumed in his ſaid Houſe, on the 20th Day of *Debember*, in the 20th Year of the Reign of our Sovereign Lord *Charles* the Second now King of *England*, and before the Day of exhibiting of them, the ſaid *John Corryton* and *Richard Harvey*, hath not ground 100 Buſhels of Wheat, and 100 Buſhels of Barley, which he had to be ground, and that were uſed and conſumed within the ſaid Houſe of the ſaid *John Lithebye* within the ſaid Manor; but he the ſaid *John Lithebye*, during all that Time, hath ground the ſaid Corn and Grain at other Mills; whereby the ſaid *John Corryton* and *Richard Harvey* have totally loſt all the Advantage of the Toll of the ſaid Grain, to the Damage of the ſaid *John* and *Richard* 40 *l.* and therefore they bring this Suit, and ſufficient Teſtimony to prove the Truth of the Premiſſes; together with this, that the ſaid *John Corryton* and *Richard Harvey* are willing to verify, that the ſaid *Sampſon Harvey* is now alive at *Launceſton* aforeſaid, in the ſaid County of *Cornwall*, —— to which there was a *Demurrer*, and a *Joinder* thereto.

The chief Objections taken to this Declaration were, firſt that it ought to have been ſaid, *that the Defendant, and the Tenants, Inhabitants within that Manor, ought to have ground at the Mill of the Plaintiff* Harvey, *all the Corn that they did not grind at the Plaintiff* Corryton's *Mill, and that all the Corn that they did not grind at the Plaintiff* Harvey's *Mill, they ought to have ground at the Mill of the Plaintiff* Corryton; *therefore you may perceive that I have alter'd the Precedent in that Manner.* 2 Saund. 115.

And the ſecond Objection was, *that the Preſcription there was laid too general, and that thereby the Defendant could not uſe any Corn and Grain for feeding his Poultry, or to make any Furmety with, unleſs it was firſt Ground:* And therefore Judge *Twiſden* ſaid it was unreaſonable; for which Reaſon I have altered this Precedent as I apprehend it ſhould be.

Peters againſt Opie.

Trinity the Twenty-third of King *Charles* the Second. *Roll* 319.

Cornwall. Stephen Peters complains of *Richard Opie*, Gent. being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, before the King himſelf, for this Cauſe, (that is to ſay) that whereas the ſaid *Stephen*, was on the firſt Day of *September*, in the 22d Year of the Reign of King *Charles* the Second, *and ſo forth*, and long before had been, and now is a Maſon; and whereas afterwards, (that is to ſay) the ſaid Day and Year, at *Bodmin* in the ſaid County, in Conſideration that the ſaid *Stephen*, at the ſpecial Inſtance and Requeſt of the ſaid *Richard Opie*, would build and erect for the ſaid *Richard* the Fences of three Houſes for Hogs, and would cleanſe and erect the Walls of the ſame Houſes for the ſaid *Richard*, he the ſaid *Richard* undertook, and then and there faithfully promiſed the ſaid *Stephen*, that he the ſaid *Richard* would well and truly pay 30 *s.* of lawful Money of *England* (which muſt now be ſaid to be lawful Money of *Great Britain*) to the ſaid *Stephen*, when ever after he ſhould be thereto required; and the ſaid *Stephen* in Fact declares, that afterwards, (that is to ſay) on the ſecond Day of *October*, in the 22d Year of the Reign of his preſent Majeſty, he the ſaid *Stephen* built and erected for the ſaid *Richard* the Fences of the ſaid three Houſes, and likewiſe cleanſed and built the Walls of the ſame. And whereas alſo afterwards, (that is to ſay) on the 4th Day of *October*, in the 22d Year of the Reign of his ſaid preſent Majeſty at *Bodmin* aforeſaid, a certain Diſcourſe was had and aroſe between the ſaid *Stephen* and the ſaid *Richard*, as well concerning the pulling down, and laying to the Ground, the Fences and Walls of the ſaid Houſes of the ſaid *Richard* before that Time erected, as alſo concerning erecting and building a Malt-houſe, and an Out-houſe call'd a Linny or Dry-houſe, in the Places where the Walls of the ſaid Houſes where then built; whereupon afterwards, (that is is to ſay) the Day and Year laſt mentioned at *Bodmin* aforeſaid, in the ſaid County, it was agreed by the ſaid *Stephen* and the ſaid *Richard*, that the ſaid *Stephen* ſhould pull down, and lay to the Ground, the Walls and Fences of the ſaid three Houſes, and ſhould build a Malt-houſe, and an Out-houſe call'd a Linny or Dry-houſe, for the ſaid *Richard*, in the Places where the ſaid Walls and Fences of the ſaid three Houſes before that Time erected and built then ſtood, and would cover the ſaid Malt-houſe, and Out-houſe call'd a Linny or Dry-houſe, with Slate or Stones called Rags; and that the ſaid *Richard* ſhould pay the ſaid *Stephen* for his Labour, in and about the pulling down, and laying to the Ground the ſaid Walls, and erecting and building the ſaid Malt-houſe and Out-houſe, 8 *l.* of lawful Money of *England*, (which muſt now be called lawful Money of *Great Britain*): And thereupon afterwards, (that is to ſay) the Day and Year laſt mentioned at *Bodmin*, in Conſideration that the ſaid *Stephen*, at the ſpecial Inſtance and Requeſt of the ſaid *Richard*, undertook, and then and there faithfully promiſed the ſaid *Richard*, to perform the ſaid Agreement in every Particular on the Part of the ſaid *Stephen* to be performed, according to the Form and Effect of the ſaid Agreement, the ſaid *Richard* undertook, and then and there faithfully promiſed the ſaid *Stephen*, that he the ſaid *Richard* would well and truly perform the ſaid Agreement, in every Particular on his Part to be perform'd; and the ſaid *Stephen* in Fact avers, that he always was, from the Time of making the ſaid Agreement hitherto ready, and offer'd to perform the ſaid Agreement in every Particular on his Part to be perform'd. *And the ſaid* Stephen *further avers, that after the making the ſaid Agreement, and before the Time that the ſaid* Stephen *exhibited his Bill againſt the ſaid* Richard, (*that is to ſay*) *on the firſt Day of* January, *in the ſaid* 22d *Year, he the ſaid* Stephen *came with his Servants, Workmen and Materials, in order to pull down, and lay to the Ground, the ſaid Walls and Fences of the ſaid three Houſes, and to build and erect in the Place where they ſtood, a Malt-houſe, and an Out-houſe called Linny or a Dry-houſe, for the ſaid* Richard, *and to cover the ſame with Slates and Stones called Rags, according to the Tenor of the ſaid Agreement; but the ſaid* Richard *then and there hinder'd and*

Mutual Promiſes.

and obſtructed the ſaid Stephen, *his Servants and Workmen, from doing and performing the ſame.* Nevertheleſs the ſaid *Richard* having no Regard to his ſaid ſeveral Promiſes and Undertakings, but contriving, and fraudulently intending, craftily and ſubtilly to defraud the ſaid *Stephen* in this Particular, hath not paid to the ſaid *Stephen*, either the ſaid 30 *s.* firſt above-mentioned, or the ſaid 8 *l.* above ſpecify'd in the ſaid Agreement, amounting in the whole to 9 *l.* 10 *s.* or any Part thereof, or in any Manner made any Satisfaction to the ſaid *Stephen* for the ſame, (altho' the ſaid *Richard* afterwards, (that is to ſay) on the firſt Day of *March*, in the 21ſt Year of the Reign of our Sovereign Lord the King at *Bodmin* aforeſaid, in the ſaid County, was by the ſaid *Stephen* thereto required) but the ſaid *Richard* hitherto altogether hath, and ſtill doth refuſe to pay to the ſaid *Stephen* the ſaid 9 *l.* 10 *s.* or to make him any Satisfaction for the ſame in any Manner howſoever, to the Damage of the ſaid *Stephen* 20 *l.* and therefore he brings this Suit, *and ſo forth.*

It may be perceiv'd that I have made an Alteration to the Precedent in Saunders, *by inſerting the above* Averment, *that the Plaintiff was obſtructed in performing that Part of the Agreement which was to be performed on his Part; and the Reaſon of it is, becauſe, that the Chief Juſtice* Hale *was of Opinion, that the Declaration was inſufficient for want of it; to which* Rainsford *agreed likewiſe, and the Judgment was ſtayed a while, but it ſeems afterwards when the Court was full,* Hale *Chief Juſtice, and the reſt of the Juſtices held, that as the Plaintiff had alledged that he was raeady, and offered to perform the Agreement on his Part, that was a ſufficient Averment after a* Verdict; *and the Reaſon that my Lord Chief Juſtice went upon at firſt, that the Declaration was inſufficient, was, becauſe, as the Defendant was to pay the Plaintiff* 8l. *for his Labour, the Performance of that Labour was a* Condition precedent *to the Promiſe, ſo that the Plaintiff ought of Neceſſity to have done the Work, or at leaſt have ſhown that the Defendant obſtructed him therein before he made a Demand of the Money. And further, ſays he, if this Agreement had been put into Writing under the Seals of the Parties, it had been clear, that the Plaintiff could not have maintain'd an Action of Covenant without ſuch* Averment; *and he made this Diſtinction, that if this Money had been to have been paid at a* certain Day, *peradventure the Law would conſtrue, that the Defendant rely'd upon the Plaintiff's mutual Promiſe for his Security; but here, as no Time certain was limited when the Money was to be paid, the Law makes this Conſtruction, that it ſhall be paid when the Work is done, and not before, unleſs the Defendant ſhews Cauſe why he could not finiſh it; and I have here inſerted a few Caſes to this Point.* 1 Saund. 320. 10 Co. 42. 1 Roll. Ab. 115. 1 Roll. Rep. 122. 2 Leon. 128. 4 Leon. 70. 1 Bulſt. 167. Pop. 198. Godb. 8, 217. Hob. 41. 1 Vent. 178, 178. 5 Lev. 23. N. Lut. 78. 1 Saund. 49. Ante 61, 136

Keech againſt **Knight.**

Trinity the Third of King *William* and Queen *Mary*. *Roll* 364.

3 Lev. 315.
A Declaration upon an Agreement for a Part of a Ship, and for the Profits ariſing by the Voyage of the ſaid Ship, ſhe then being at Sea.

A Diſcourſe about the ſaid Ship.

The Agreement.

Mutual Promiſes.

London. *William Knight*, late of *Weſtbeer* in the County of *Kent*, Clerk, was attached to anſwer to *William Keech*, in an Action of *Treſpaſs upon the Caſe*; and whereupon the ſaid *William Keech*, by *J. T.* his Attorney complains, that whereas one *Nicholas Carrington* in his Life-time, (that is to ſay) on the firſt Day of *July*, in the Year of our Lord 1688, was lawfully poſſeſs'd of a certain Part, (being the Moiety of a Ship called the *Lawrell*, as his own proper Part) and being ſo poſſeſs'd of ſuch his Intereſt therein, afterwards (that is to ſay) the ſame Day and Year at *London* aforeſaid, in the Pariſh of St. *Mary Bow*, in the Ward of *Cheap*, died poſſeſs'd thereof. And whereas the ſaid *William Knight*, afterwards, (that is to ſay) on the 13th Day of *July*, in the Year of our Lord 1689, at *London* aforeſaid, in the ſaid Pariſh and Ward, was poſſeſs'd (as he aſſerted) in Right of *Anne* his Wife, Executrix of the laſt Will and Teſtament of the ſaid *Nicholas Carrington*, of all the Intereſt that the ſaid *Nicholas Carrington* had in the ſaid Ship, (then being in her Voyage upon the High Seas) and that at that Time there was, and would be due to the ſaid *William Knight*, in Right of his ſaid Wife, divers Sums of Money accruing and ariſing from the Profits of the ſaid Voyage. And whereas afterwards, (that is to ſay) on the 13th Day of *July*, in the Year of our Lord 1682, at *London* aforeſaid, in the ſaid Pariſh and Ward, there was a certain Diſcourſe aroſe between the ſaid *William Keech* and the ſaid *William Knight*, of and concerning the Buying and Selling of all the ſaid *William Knight's* Intereſt in the ſaid Ship in Right of his ſaid Wife, and the Profits, accruing and ariſing from that Voyage; and upon that Diſcourſe, it was then and there agreed between them, that the ſaid *William Knight* ſhould ſell and convey to the ſaid *William Keech* all his Intereſt in the ſaid Ship, and ſhould aſſign to the ſaid *William Keech* all his Profits accruing from that Voyage; and that ſuch Sale and Aſſignment ſhould be reduced into Writing; and that the ſaid *William Keech* ſhould pay to the ſaid *William Knight* 600 *l.* for all the ſaid Intereſt of the ſaid *William Knight*; and for all his Profits accruing from the ſaid Voyage, if his ſaid Intereſt, in Right of his ſaid Wife ſhould amount to one full Moiety of the ſaid Ship, and if not, then according to the Rate aforeſaid, for all the Intereſt of the ſaid *William Knight* in the ſaid Ship, whether the ſame ſhould be more or leſs than the ſaid Moiety; and that the ſaid *William Keech* ſhould pay to the ſaid *William Knight* 23 *l.* 10 *s.* Part of the ſaid Money, and the Remainder thereof at the Time of the Execution of the ſaid Writings: And thereupon, in Conſideration that the ſaid *William Keech* had then and there in Hand paid to the ſaid *William Knight*, the ſaid Sum of 23 *l.* 10 *s.* and then and there undertook, and faithfully promiſed the ſaid *William Knight* to fulfil every Particular on his Part to be performed, he the ſaid *William Knight* undertook, and then and there faithfully promiſed the ſaid *William Keech*, that he the ſaid *William Knight* would well and truly perform and fulfil the ſaid Agreement in every Particular

Averment of the Performance on the Part of the Plaintiff.

The Breach.

cular on his Part to be performed: *And altho' afterwards, (that is to ſay) on the firſt Day of* Auguſt, *in the ſaid Year of our Lord 1689, at* London *aforeſaid, in the ſaid Pariſh and Ward, he the* ſaid William Keech *cauſed the ſaid Agreement to be reduced into Writing, and then and there ſhew'd the ſame to the ſaid* William Knight, *and requeſted him to Execute the ſame.* Nevertheleſs the ſaid *William Knight* having no Regard to his ſaid Promiſe and Undertaking made in the Manner as above, but contriving, and fraudulently intending to deceive and defraud the ſaid *William Keech* in this Particular, then and there refuſed to execute the ſaid Writing, and hath not performed his ſaid Agreement in delivering to the ſaid *William Keech* all his Intereſt which he had in Right of his Wife in the ſaid Ship, and the Profits accruing by the ſaid Voyage, altho' the ſaid *William Knight*, afterwards (that is to ſay) on the 10th Day of *March*, in the ſaid 2d Year, and often afterwards at *London* aforeſaid, in the ſaid Pariſh and Ward, was by the ſaid *William Keech* thereto required; but the ſaid *William Knight* hitherto hath, and ſtill doth altogether refuſe to perform the ſaid Agreement, to the Damage of the ſaid *William Keech* 600 *l.* and therefore he brings this Suit, *and ſo forth.*

In the Precedent *from which this was taken, there is likewiſe another* Narr. for 23 l. 10 s. *had and received by the Defendant to the Uſe of the Plaintiff; the Defendant pleaded as to the ſecond Promiſe* non aſſumpſit; *and to the Firſt, that the Agreement* was never reduced into Writing, nor executed by the Defendant, *to which there was a* Demurrer *and a* Joinder *in* Demurrer; *and the Reporter ſays, that there was a* Verdict *for the Plaintiff, and an Objection taken to the* Declaration, *in Arreſt of Judgment, that the Breach there was laid too general; which was only, that the Plaintiff had not performed his Agreement, or paid the ſaid* 23 l. 10 s. *and ſo they would have had it, that the Plaintiff ought to have ſhewn ſome particular Inſtance of the Non-performance by the Defendant; as to ſay the* Plaintiff tender'd to him a Writing which he had refuſed to ſign, and that the Defendant had not delivered his Part of the Ship; *And they that were of Counſel with the Defendant would have it, that the Plaintiff ought to have done the firſt Act, (that is) to tender the Writing, but the Court ſeemed clearly of Opinion, that the Defendant was to ſell his Part by a Writing, and therefore it was his Buſineſs to make and tender that Writing, as where there is a Covenant to make a Bond, the Covenantor is to make and tender it; and it was ſaid by the Court that this being upon a* mutual Promiſe *the Breach was well aſſign'd, eſpecially after a* Verdict; *but I leave it to the Judicious, whether the above* Averment *in ſhewing the above Particulars is not material; and it may be perceived I have alter'd the Declaration, that it might not be liable to either of the Objections, which I apprehend is better in this Manner, if the Nature of the Caſe will bear it.*

Craft

Craft againſt Boite.

Trinity 20, 21 of King *Charles* the Second. *Roll* 902.

4 Saund. 241, 242, 243, 244.
A Declaration for Words ſpoken of a Clergyman.

London. Be it remember'd that heretofore, (to wit) in the Term of St. *Michael* laſt paſt, *Joſeph Craft* a Clergyman, by *Daniel Marrod* his Attorney, came before our Sovereign Lord the King at *Weſtminſter*, and brought here into his ſaid Majeſty's Court his Bill againſt *Joſeph Boite*, being in the Cuſtody of the Marſhal, *and ſo forth*, in an Action of *Treſpaſs upon the Caſe*, and there are Pledges for proſecuting, (that is to ſay) *John Doe*, and *Richard Roe*; which ſaid Bill follows in theſe Words (to wit) *London.* *Joſeph Craft* a Clergyman, complains of *Joſeph Boite*, being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, before the King himſelf, for this Cauſe, (to wit) That whereas the ſaid *Joſeph Craft* is a good, true, pious, and honeſt Subject, and liege Perſon of our Sovereign Lord the King, and hath always from the Time of his Nativity hitherto carried, behaved, and govern'd himſelf, as ſuch, a good, true, pious, faithful and honeſt Subject, of our ſaid Sovereign Lord the King, and of his late Majeſty King *Charles* the Firſt, and hath been all his Life-time hitherto held, reputed, and eſteem'd of a good Name, Character, Condition, Converſation and Reputation, as well by a great many worthy Perſons as others, great and faithful Subjects of our ſaid Sovereign Lord the King, with whom the ſaid *Joſeph Craft* hath been acquainted; and moreover hath hitherto remained and continued as ſuch, a faithful, and honeſt Subject of his preſent Majeſty, uncharged, untouch'd, and unſuſpected of any kind of Theft, Felony, Fraud, Deceit, or the Guilt, or Suſpicion of any ſuch enormous Crimes, or either of them, by means of which good Name, Character Condition, Converſation and Reputation; and by reaſon of his Learning in the Study of Divinity at the Univerſity of *Oxford* for four Years and upwards, had gain'd the Favour and good Will of ſeveral Peers, and Noblemen of this Kingdom of *England*; and the ſaid *Joſeph Craft*, for the Space of three Years laſt paſt hath been, and now is a Miniſter of the Goſpel, in the Holy and Eſtabliſh'd Church of this Kingdom of *England*, and hath taken upon himſelf the Holy Orders of the ſame; and during the whole Time laſt above-mention'd, remain'd in that Function, with the higheſt Praiſe and Commendation for his Exemplary Zeal for Piety, Innocency and Integrity, ſo that he had thereby gain'd and obtain'd, not only the Love and Good-will of all his Neighbours, and other faithful Subjects of our ſaid Sovereign Lord the King, and of the ſaid ſeveral Peers and Noblemen, but alſo had daily reap'd and receiv'd ſeveral great Gains, Profits and Advantages, for the more ample and better Support and Livelihood of the ſaid *Joſeph Craft*, and whereby his Wealth had been greatly increas'd. Nevertheleſs the ſaid *Joſeph Boite* well knowing the Premiſſes, but contriving, and malitiouſly intending to deprive the ſaid *Joſeph Craft* of his Good-name, Character, Credit, Eſteem and Reputation which he had before been endued with, and to bring the ſaid *Joſeph Craft* into an op-

The Gravamen.

probrious Scandal, and the Diſpleaſure of all Perſons, as well thoſe of Worth, as others good and faithful Subjects of our ſaid Sovereign Lord the King, and eſpecially of his Neighbours and Friends, and to cauſe the ſaid *Joſeph Craft* to be puniſhed acording to the Statutes and Laws of this Kingdom of *England*, made and provided for thoſe who ſhould commit any ſort of Theft or Felony, on the 20th Day of *October*, in the 20th Year of the Reign of his preſent Majeſty at *London*, (to wit) at the Pariſh of St. *Mary Bow*, in the Ward of *Cheap*, in the Preſence and Hearing of ſeveral of his Majeſty's faithful Subjects, then and there being Preſent, and hearing the ſame falſly and malitiouſly ſpoke, aſſerted, publiſhed and proclaimed with a loud Voice theſe following falſe, fictitious, ſcandalous and opprobrious *Engliſh* Words of the ſaid *Joſeph Craft*, (that is to ſay) *look, there is a young thieviſh Rogue*, (meaning and pointing with his Finger to the ſaid *Joſeph Craft*, the now Plaintiff) *didſt ever ſee ſuch a thieviſh Rogue, he* (again meaning the ſaid *Joſeph Craft*) *has ſtol'n 200 l. worth of Plate out of* Wadham College, (meaning *Wadham College*, in the Univerſity of *Oxford*;) and the ſaid *Joſeph Boite* continuing his Malice againſt the ſaid *Joſeph Craft*, afterwards (to wit) on the 21ſt Day of *October*, in the ſaid 20th Year of the Reign of his preſent Majeſty, at *London* aforeſaid, in the ſaid Pariſh and Ward, falſely and malitiouſly ſpoke, aſſerted, and with a loud Voice, publiſhed and proclaim'd theſe other following, falſe, fictitious, ſcandalous, and opprobrious *Engliſh* Words, of the ſaid *Joſeph Craft*, in the Preſence and Hearing of ſeveral of his Majeſty's Subjects, and of the ſaid *Joſeph Craft*'s Neighbours and Friends, then and there hearing the ſame, (to wit) *didſt ever ſee ſuch a thieviſh Rogue*, (meaning, and pointing his Finger at the ſaid *Joſeph Craft* the now Plaintiff) *he* (again meaning the ſaid *Joſeph Craft*) *ſtole 200 l. worth of Plate out of* Wadham College, (meaning *Wadham College*, in the Univerſity of *Oxford*) whereas, in Truth the ſaid *Joſeph Craft* never was guilty of, or committed the ſaid Felonies, or either of them, or any ſuch like Crime; by means of which ſpeaking, proclaiming, and publiſhing the ſaid ſeveral falſe, fictitious, ſcandalous, and opprobrious *Engliſh* Words, the ſaid *Joſeph Craft* is not only injured and hurt in his good Name, Character, Reputation and Eſteem, but alſo ſeveral of his Majeſty's Subjects on that Occaſion, every Day more and more withdraw themſelves from the Acquaintance of the ſaid *Joſeph Craft*; and the ſaid *Joſeph Craft* hath been oblig'd and compell'd to expend great Sums of Money and to undergo a great deal of bodily Pains and Labour to make manifeſt his Innocency in the Premiſſes, to the Damage of the ſaid *Joſeph* 200 *l.* and thereof he brings this Suit, and ſufficient Proof of the Premiſſes.

The Words.

Other Words.

The Plea.

And now at this Day, (that is to ſay) *on Saturday next after the Octaves of St.* Hillary, (to which Day the ſaid *Joſeph Boite* had leave to imparl, and then to anſwer to the ſaid Bill, *and ſo forth*;) as well the ſaid *Joſeph Craft* by his ſaid Attorney, as the ſaid *Joſeph Boite* by *Andrew Loder* his Attorney, come before our Sovereign Lord the King at *Weſtminſter*; and the ſaid *Joſeph Boite* defends the Force and Injury, *and ſo forth*, and ſaith, that the ſaid *Joſeph Craft* ought not to have or maintain his ſaid Action againſt him thereof, becauſe he ſaith, that long before the ſaid ſeveral Times,

Juſtifies the Words.

when the ſaid Words ſpecified in the ſaid Declaration were ſuppoſed to be ſpoken by the ſaid *Joſeph*, (that is to ſay) on the firſt Day of *June*, in the 20th Year of the Reign of his preſent Majeſty, the ſaid *Joſeph Craft* feloniouſly, and as a Felon ſtole, took and carried away three Ounces of Silver Plate, of the Goods and Chattels of the Wardens, Fellows and Scholars of *Wadham College*, in the Univerſity and City of *Oxford*, in the County of the ſame City, at the ſaid City of *Oxford*, in the County of the ſame City, by which the ſaid *Joſeph Boite*, afterwards (to Wit) on the ſame 20th Day of *October*, in the ſaid 20th Year of the Reign of his preſent Majeſty, in the Preſence and Hearing of ſeveral of his Majeſty's faithful Subjects, being then and there preſent, and hearing the ſame ſpoke, aſſerted, and with a loud Voice, publiſhed and proclaim'd to and of the ſaid *Joſeph Craft*, the *Engliſh* Words ſpecified in the ſaid Declaration, (*here reciting the firſt Words*) and afterwards (to wit) on the 21ſt Day of *October*, in the ſaid 20th Year at *London* aforeſaid, in the ſaid Pariſh and Ward, he the ſaid *Joſeph Boite* likewiſe ſpoke, aſſerted, and with a loud Voice, publiſhed and proclaim'd to and of the ſaid *Joſeph Craft* the other Words ſpecified in the ſaid Declaration, (to wit) *didſt ever*, &c. (*here reciting the other Words in the* Declaration, *concluding thus*) as it was lawful for him to do for the Reaſons above; and this he is ready to verify; whereupon he prays Judgment, whether the ſaid *Joſeph Craft* ought to maintain his ſaid Action thereof againſt him, *and ſo forth*.

Replication, That the Defendant ſpoke the Words of his own Wrong, and without any ſuch Cauſe, as the Defendant had alledg'd in his Plea.

And the ſaid *Joſeph Craft* ſaith, that he, notwithſtanding any thing above alledged by the ſaid *Joſeph Boite*, in his ſaid Plea, ought not to be precluded from having his ſaid Action thereof againſt the ſaid *Joſeph Boite*, becauſe he ſaith, that the ſaid *Joſeph Boite* of his own Wrong, and without any ſuch Cauſe, as is above alledged by the ſaid *Joſeph Boite*, in his ſaid Plea, on the ſame 20th Day of *October*, in the ſaid 20th Year of the Reign of his preſent Majeſty at *London* aforeſaid, in the ſaid Pariſh and Ward, ſpoke, aſſerted, and with a loud Voice proclaimed and publiſhed of the ſaid *Joſeph Craft* the ſaid *Engliſh* Words firſt above ſpecified in the ſaid Declaration, (to wit) *look there's a young thieviſh Rogue*, (*here reciting the Words firſt above-mentioned in the ſaid Declaration*;) and alſo afterwards, (to wit) on the ſaid 21ſt Day of *October*, in the ſaid 20th Year, the ſaid *Joſeph Boite* ſpoke, aſſerted, and with a loud Voice proclaimed and publiſhed of the ſaid *Joſeph Craft* the laſt other *Engliſh* Words above-mentioned in the ſaid Declaration, (to wit) *didſt ever ſee ſuch a thieviſh Rogue*, (*here reciting the ſaid other Words concluding thus*) in ſuch Manner and Form as the ſaid *Joſeph Craft* has above thereon declared againſt him; and this he prays may be enquired of by the Country; and the ſaid *Joſeph Boit* prays likewiſe the ſame.

The Iſſue.

The Caſe. 1 Saund. 247.

After a Verdict, Saunders *moved in* Arreſt of Judgment, *alledging, that in this Caſe there was a Miſ-trial; for the ſpeaking the Words at* London, *was confeſt by the Defendant in his* Juſtification; *and the Point of the Iſſue was, whether the Plaintiff committed the Felony alledged by the Defendant in his Juſtification or no; which was a Matter triable, and ought to have been tried at* Oxford, *and cited the*

the Caſe of Ford *and* Brook, *in* Crook Eliz. 261. *where an Action for Slander of Perjury was brought againſt the Defendant at* Dale *in* Eſſex; *the Defendant juſtifies, that he was perjur'd at* Weſtminſter, *and the* Venue *was awarded from the County of* Middleſex; *and ſo is the Caſe of* Boyer *and* Jenkins *in* Moor's Reports, 410. *and it was clearly ſo at Common Law; but the Queſtion was upon the new Statute of the* 16 & 17 Car. 2. cap. 8. *by which* it is Enacted, that no Judgment ſhall be arreſted or reverſed, for that there was no right *Venue*, ſo as the Cauſe was tried by the Jury of the proper County where the Action was laid; *and* Saunders *urged, that it ought to be interpreted, that the Cauſe ſhall be tried in the proper County where the Iſſue ariſes; and here it ariſes in* Oxfordſhire; *for if a literal Conſtruction be put upon that Statute, it will ouſt all the Trials by the proper County where a local Juſtification is pleaded, which ariſe out of the County where the Action is laid, as where it is for a falſe Impriſonment at* London; *and the Defendant juſtifies at* Oxford *as Sheriff of* Oxfordſhire, *and traverſes being guilty at* London; *now if the Iſſue ſhould be join'd upon the Cauſe of Impriſonment, it ought to be try'd in* Oxfordſhire, *but by this Conſtruction it might be try'd at* London; *ſo that in this Caſe* Saunders *argued, that a wrong County was not aided or intended to be aided by that Statute; and* Twiſden *was ſtrongly of that Opinion; but* Keeling, *Chief Juſtice* Rainsford *and* Morton, *were of the contrary Opinion; and Judgment was given for the Plaintiff; but Quære whether this be Law, for* 2 Mod. 24. *is to the Contrary. And ſee further the following Caſes relating thereto.* 1 Mod. 37, 199. 2 Mod. 24. 1 Lev. 207, 208. 1 Sid. 326. 1 Vent. 22, 10, 263, 272. 2 Lev. 122, 164, 165. 2 Jo. 92. Ray. 392, 398. 3 Keb. 350, 371, 509. 6 Mod. 82. 2 Saund. 258. 3 Mod. 124. 5 Mod. 223. 2 Salk. 668.

Robins againſt **Robins.**

2 Salk. 727. **A Declaration for malitiouſly holding to Bail for 40l. when the Sum due was but 10l.**

Cornwall. Stephen Robins, Gent. complains of *John Robins*, Gent. being in the Cuſtody of the Marſhal of the *Marſhaley* of our Sovereign Lord the King, before the King himſelf; for that whereas on the 28th Day of *May*, in the fifth Year of the Reign of our ſaid Sovereign Lord the King, he the ſaid *Stephen Robins* was indebted to the ſaid *John Robins* in the Sum of ten Pounds and no more, for *Goods ſold and deliver'd by the ſaid* Stephen, *to him the ſaid* John, *and the ſaid* Stephen *was not at that Time indebted to the ſaid* John *in any other greater Sum on any other Account whatſoever*; nor had the ſaid *John* any legal Cauſe of Action againſt him the ſaid *Stephen*, on any other Account whatſoever, ſo as the ſaid *Stephen* ought to have been arreſted, put in Priſon and detained, until the ſaid *Stephen* could find ſufficient Sureties to anſwer to the ſaid *John* in ſuch Action. Nevertheleſs the ſaid *John* well knowing the Premiſſes, but contriving, and malitiouſly intending, unjuſtly to bring into Trouble, oppreſs, damnify, and detract the ſaid *Stephen* in his Credit and Reputation, he the ſaid *John* on the 28th Day of *May*, in the ſixth Year of the Reign of our ſaid Sovereign Lord the King at *Bodmin* in the ſaid County, *upon his corporal Oath, depoſed before*

fore J. M. *a Commiſſioner, lawfully authorized to adminiſter ſuch Oath, that the ſaid* Stephen Robins *at the Time of the ſaid* John Robins's *taking ſuch Oath was juſtly indebted to him the ſaid* John, *in the Sum of forty Pounds and upwards, for Goods ſold and deliver'd by the ſaid* John *to the ſaid* Stephen; and the ſaid *John* afterwards, (that is to ſay) on the ſixth Day of *June*, in the ſaid ſixth Year of the Reign of his ſaid preſent Majeſty, cauſed the ſaid *Stephen* to be arreſted, under a Pretence and Colour of a Proceſs at Law, for the Sum of forty Pounds; and altho' the ſaid *Stephen* was always ready to have appear'd to any legal Proceſs for the ſaid Sum of ten Pounds that was really, and in Truth due from him the ſaid *Stephen* to the ſaid *John*, and to anſwer to the ſaid *John* according to the Tenor of ſuch Proceſs. *Notwithſtanding which* he the ſaid *John*, the ſame Day and Year laſt above-mentioned, malitiouſly cauſed and procured the ſaid *Stephen* to be arreſted and impriſon'd at *Bodmin* aforeſaid, and to be there in Priſon detain'd for no other Cauſe, but that the ſaid *Stephen* was not able to find ſufficient Sureties to anſwer to the ſaid *John*, according to the Tenor of the ſaid Proceſs ſued out as above for the ſaid Sum of forty Pounds, whereby the ſaid *Stephen* was compell'd to lay out and expend ſeveral large Sums of Money for his Support in the ſaid Priſon; and during the Time he continued there on that Occaſion, his neceſſary Affairs remain'd undone; and beſides, the ſaid *Stephen* was thereby greatly injured in the means of getting his Livelihood for himſelf and Family; and it was a manifeſt Vexation and Trouble to his Mind, as well as tended to a great Diſcredit and Diſgrace of him the ſaid *Stephen*; whereupon the ſaid *Stephen* declares, that he is injured and endamaged to the Value of one hundred and fifty Pounds; and thereof he brings this Suit, and ſufficient Proof, when the Court will conſider thereof.

It may be perceived in 1 Salk. 15. *that the* Precedent *from whence this was taken was held ill, becauſe the Plaintiff ought to have ſhewn, that* he was indebted to the Defendant in ſo much Money, and that the Defendant took out ſuch a Writ for ſo much more, on Purpoſe to hold him to Bail; *how elſe, ſays the Court, can it appear to us, whether, and how far, he might be held to Bail in that Action; therefore I have alter'd the Declaration as I apprehend it ſhould be, and have here inſerted, that the Defendant made an* Affidavit *purſuant to the late Act of Parliament for ſo much Money, when in Truth there was no more due than the Sum of ten Pounds; whether that is abſolutely Neceſſary I will not determine; but certainly 'tis a great Aggravation to ſhew it; and ſuch Affidavit muſt now be filed before the Plaintiff can have his Writ; therefore it is eaſily to be had in Evidence; and Note, in* 1 Saunders 228. *'tis ſaid this Action lies not till the Original Action is determined.*

Trinity Term, the Fourth of King *William* and Queen *Mary*. *C. B.* *Roll* 306.

3 Lev. 356, 7, 8.

A Declaration for negligently keeping Fire whereby the Plaintiff's Stables, &c. were burnt down.

The Writ.

Middleſex. *Juſtinian Iſham*, late of *Lampert*, in the County of *Northampton*, Baronet, was attach'd to anſwer to *Dorothy Panton*, Widow, in an Action; whereas according to the Law and Cuſtom of this Kingdom of *England*, of our Sovereign Lord and Lady the King and Queen, hitherto uſed and approved of, every Man and Woman of this Kingdom of *England* is bound ſafely and ſecurely to keep their Fire by Day and Night, ſo that no Damage may in any wiſe happen to any Perſon of this Kingdom by Fire, for want of due Care thereof; wherefore the ſaid *Juſtinian* kept his Fire at the Pariſh of St. *Martin in the Fields*, in the ſaid County, in ſo negligent and careleſs a Manner, that by the Defect of taking due Care of ſuch Fire, certain Houſes, Edifices and Buildings of the ſaid *Dorothy*, of the Price of 1000 *l.* were there burnt and deſtroyed, to the great Damage of the ſaid *Dorothy*, and contrary to the ſaid Law and Cuſtom, *and ſo forth*.

The Declaration, ſetting forth the General Law of the Land.

The Breach.

And whereupon the ſaid *Dorothy*, by *Thomas Goodall* her Attorney complains, that whereas according to the Law and Cuſtom of this their ſaid Majeſties Kingdom of *England*, hitherto uſed and approved of therein, every Man and Woman of this Kingdom of *England* is bound, ſafely and ſecurely to keep, and take Care of their Fire by Day and Night, ſo that for want of ſuch due Care of their ſaid Fire, no Damage may in any wiſe happen to any Perſon of the ſaid Kingdom. Nevertheleſs the ſaid *Juſtinian* on the ſixth Day of *May*, in the firſt Year of the Reign of their ſaid preſent Majeſties, kept his Fire at the Pariſh of St. *Martin in the Fields*, in ſo negligent and careleſs Manner, that for want of due Care thereof, certain Houſes, Edifices and Structures, (that is to ſay) ſix Stables, ſix Haylofts, and three Lodging-rooms of the ſaid *Dorothy*, of the Price, *and ſo forth*, were there burnt down and deſtroyed, to the great Damage, *and ſo forth*, and againſt the Peace, *and ſo forth*. Whereupon the ſaid *Dorothy* ſays ſhe is injured and endamaged to the Value of one thouſand Pounds; and thereof ſhe brings this Suit, and hath good and ſufficient Proof of the Premiſſes, when the Court will conſider thereof.

The Plea of Not guilty.

The Poſtea.

And the ſaid *Juſtinian*, by *Charles Draper* his Attorney, comes and defends the Force and Injury, when, *and ſo forth*; and ſays, that he is in no wiſe Guilty of the Premiſſes above charg'd upon him, as the ſaid *Dorothy* above complains againſt him; and thereof puts himſelf upon the Country, and the ſaid *Dorothy* does likewiſe the ſame; therefore the Sheriff is commanded, that he cauſe to come hither *on the Octave of the Holy Trinity*, Twelve, *and ſo forth*, by whom, *and ſo forth*, and who neither, *and ſo forth*, to recognize, *and ſo forth*, becauſe as well, *and ſo forth*. Afterwards on the Day, and at the Place within contained, the within named *Dorothy Panton*, Widow, comes hither by her Attorney within mentioned, and the within written Sir *Juſtinian Iſham*, Baronet, tho' ſolemnly required comes not, but makes Default; therefore let the Jury within mentioned be accepted of againſt him thro' his Default; and the Jurors of that Jury having been ſummon'd, are come hither, who being elected, tried

A ſpecial Verdict.

and ſworn, to declare the Truths of the within Contents, ſay upon their Oaths, that before the ſaid Time, when the within mentioned ſix Stables, ſix Haylofts, and three Chambers of the ſaid *Dorothy Panton*, are ſuppoſed in the within written Declaration to have been burnt down, and deſtroyed, (that is to ſay) on the firſt Day of *April*, in the within written firſt Year of the Reign of their preſent Majeſties, ſhe the ſaid *Dorothy Panton* was ſeized in her Demeſne, as of a Fee, of and in the ſame ſix Stables, ſix Haylofts, and three Chambers, with the Appurtenances, ſituate and being in the within written Pariſh of St. *Martin in the Fields*, in the County of *Middleſex*; and being ſo ſeized thereof, afterwards, and before the ſaid Time when, *and ſo forth*, (to wit) on the firſt Day of *April*, in the ſaid firſt Year, ſhe the ſaid *Dorothy* demiſed to the ſaid Sir *Juſtinian Iſham*, Bart. the now Defendant, one Stable, and one Hayloft, with the Appurtenances, for him the ſaid Sir *Juſtinian Iſham*, and his Aſſigns, to have and hold the ſame from the ſaid firſt Day of *April*, in the ſaid firſt Year, for one Week then next following, and ſo from one Week to another, ſo long as the ſaid *Dorothy* and *Juſtinian* ſhould think fit, for the Rent of 8 *s.* of lawful Money of *England* for every Week, ſo long as the ſaid *Juſtinian* ſhould have and hold the ſaid Stable and Hayloft, with the Appurtenances, by Virtue af the ſaid Demiſe. And on the ſame firſt Day of *April*, in the ſaid firſt Year, ſhe the ſaid *Dorothy* demiſed five Stables, five Haylofts, and three Chambers, with the Appurtenances, the Reſidue of the ſaid Tenements and Premiſſes to five other Perſons, for divers Terms and Times then to come; and on the ſame firſt Day of *April*, in the ſaid firſt Year, the ſaid *Juſtinian Iſham* entred into the ſaid before mentioned demiſed Stable and Hayloft, with the Appurtenances, and was poſſeſs'd thereof; and on the ſame firſt Day of *April*, the ſaid five other Perſons entred into their five Stables, five Haylofts, and three Chambers, with the Appurtenances, demiſed to them as aforeſaid, and were reſpectively poſſeſs'd thereof. And the ſaid *Juſtinian* being poſſeſs'd as aforeſaid of one Stable, and one Hayloft, with the Appurtenances, as Tenant to the ſaid *Dorothy*, by Virtue of the ſaid Demiſe, and they the ſaid five other Perſons being poſſeſs'd, as aforeſaid, of the Reſidue of the ſaid Tenements, with the Appurtenances, by Virtue of the ſaid Demiſe made to them as aforeſaid, as Tenants alſo to the ſaid *Dorothy*, (the Reverſion of all and ſingular the Premiſſes, with the Appurtenances belonging to the ſaid *Dorothy*) a Fire through the Negligence of the ſaid *Juſtinian*, happen'd to begin in the ſaid Stable, demiſed aforeſaid to the ſaid *Juſtinian*, and being in his Poſſeſſion by Virtue thereof. And on the ſame ſixth Day of *May*, in the ſaid firſt Year, it burnt down, and totally deſtroyed, as well the ſaid Stable and Hayloft, with the Appurtenances demiſed to, and in the Poſſeſſion of the ſaid *Juſtinian*, as alſo the ſaid other five Stables, five Haylofts, and three Chambers, with the Appurtenances demiſed as aforeſaid to the ſaid five other Perſons, and then being likewiſe in their reſpective Poſſeſſions; but whether upon the whole Matter aforeſaid found by the ſaid Jury in the Manor aforeſaid, the ſaid *Juſtinian* is Guilty of the Premiſſes within charged upon him, the ſaid Jury are altogether ignorant, and therefore they pray the Advice of their Majeſties Juſtices at *Weſtminſter*; and if upon the ſaid whole Matter found by the ſaid Jury in the Manner aforeſaid, it ſhall appear to their Majeſties Juſtices at *Weſtminſter*, that the ſaid *Juſtinian* is guilty of the Premiſſes within charged upon him; then the ſaid Jury upon their Oaths ſay, that the ſaid *Juſtinian* is guilty of the Premiſſes charged upon him in ſuch Manner and Form as the ſaid *Dorothy* within complains againſt him; and in that Caſe do aſſeſs the Damages of the ſaid *Dorothy*, occaſion'd by the burning down, and deſtroying of the ſaid one Stable, and one Hayloft, demiſed as aforeſaid to the ſaid *Juſtinian*, beſides her Expences and Coſts laid out by her about her Suit in this Cauſe to 15 *l.* and do aſſeſs the Damages of the ſaid *Dorothy*, occaſioned by the burning down, and deſtroying of the Reſidue of the ſaid Meſſuages and Premiſſes, with the Appurtenances, beſides her ſaid Expences and Coſts to 85 *l.* and for her Expences and Coſts to 40 *s.* but if upon the ſaid whole Matter found by the ſaid Jury in the Manner aforeſaid, it ſhall appear to their ſaid Majeſties Juſtices at *Weſtminſter*, that the ſaid *Juſtinian* is in no wiſe guilty of the Premiſſes within charged upon him; then the ſaid Jury ſay upon their ſaid Oaths, that the ſaid *Juſtinian* is in no wiſe guilty of the Premiſſes within charged upon him, as the ſaid Sir *Juſtinian Iſham*, Baronet, hath within alledged in his Defence; but becauſe the Court, *&c.*

3 Lev. 359.

The chief Queſtion upon this Special Verdict *was, whether the Action would lie by the* Leſſor *againſt her* Leſſee *or* Tenant at Will; *and as to that it was reſolved it would not, as to the Stable demiſed to him; but that the Action would well lie as to the Stables demiſed to the other Perſons; and although the Writ was*, that no Damage might happen to any Perſon whatſoever, *and not to the Owners of the* Neighbouring Houſes, *yet the Court, as to that, held the Writ was maintainable. This Caſe is likewiſe reported in* Salkeld 19.

Michaelmas the Thirty-fifth of King *Charles* the Second. *C. B. Roll* 459.

3 Lev. 171, to 179.

A Declaration for digging in ſuch manner, and ſo near the Plaintiff's Houſe that it fell down, ſo that he was forced to remove to another Habitation, and was not able to carry on his Trade of a Sadler therein.

London. Thomas Kenſey, late of *London*, Vintner, *Robert Fenwick*, late of *London*, Vintner, *John Howard*, late of *London*, Carpenter, and *John Fitch*, late of *London*, Bricklayer, where attach'd to anſwer to *Henry Barwell*, Eſq; in an Action of *Treſpaſs upon the Caſe*; and whereupon the ſaid *Henry*, by *Samuel Moor* his Attorney complains, that whereas the ſaid *Henry* on the 24th Day of *April*, in the 34th Year of the Reign of his preſent Majeſty *Charles* the Second, King of *England, and ſo forth*, did, and long before had dwelt with his Family at *London*, (to wit) in the Pariſh of St. *Dunſtan* in the *Weſt*, in the Ward of *Farringdon* without, in a Meſſuage ſituate, and lying in the ſaid Pariſh and Ward, and then carried on, and exerciſed the Art and Myſtery, or Trade of a Sadler, in the ſaid Meſſuage, and in a Shop, Parcel of the ſame, and had prepared and intended to have uſed, exerciſed, and continued his Dwelling and Imployment in his ſaid Art and Myſtery of a Sadler, in the ſame Meſſuage and Shop, for the Space of a Year then next to come; (he the ſaid *Henry Barwell*, then having a legal Right and Title to continue and dwell in the ſaid Meſſuage and Shop, and there to uſe and exerciſe his ſaid Art and Myſtery for ſo long Time) for the better Support and Maintenance of himſelf and Family. Nevertheleſs the ſaid *Thomas Kenſey*, *Robert Fenwick*, *John Howard*, and *John Fitch*, well knowing the Premiſſes, but contriving, and malitiouſly intending to hinder and deprive him of dwelling with his Family in his ſaid Meſſuage, and alſo of the Exerciſe of his ſaid Trade in the ſaid Meſſuage and Shop, on the 24th Day of *April*, in the Year aforeſaid, at *London* aforeſaid, in the ſaid Pariſh and Ward, they pulled down, and laid to the Ground, the Foundation of a certain Houſe next adjoining to the ſaid Meſſuage of the ſaid *Henry Barwell*, and dug the Soil and Ground, there contiguouſly adjoining to the ſaid Meſſuage of the ſaid *Henry Barwell* in ſuch Manner, and ſo near the Foundation of the ſaid Meſſuage of the ſaid *Henry Barwell*, and caſt forth ſo great a Quantity of Earth coming from thence, that by digging of the ſaid Soil and Ground, and caſting forth the Earth proceeding from thence, a great Part of the ſaid Meſſuage of the ſaid *Henry Barwell*, then and there fell to the Ground, and the Remainder of the ſaid Meſſuage became totally disjoined, waſted and ſpoiled; by Reaſon whereof he the ſaid *Henry Barwell* was oblig'd and compell'd with himſelf and Family, to depart from their ſaid Habitation, and continue to live out of the ſame, for the Space of eleven Months then next following; and during all that Time, was compell'd and oblig'd to lay out great Sums of Money, as well in and about procuring, and providing another Habitation for himſelf and Family, and for the removing himſelf, his Family, Goods and Merchandizes to ſuch other Habitation; as alſo by Reaſon of his Payment of Rent for his ſaid Meſſuage (ſo as aforeſaid pulled down) for the ſaid Space of eleven Months; and alſo he the ſaid *Henry Barwell* at *London* aforeſaid, in the ſaid Pariſh and Ward, during all that Time totally loſt, and was depriv'd of all the Uſe and Exerciſe of his ſaid Art and Myſtery in the ſaid Shop, (that Shop being well known and accuſtom'd, and to which ſeveral Noblemen, and others, Subjects of our ſaid Sovereign Lord the King, uſed to repair to buy Saddles, and ſuch other Goods and Merchandixes, as belong'd to the ſaid Art and Myſtery of the ſaid *Henry Barwell*): Whereupon the ſaid *Henry Barwell* ſaith, he is injured and endamaged to the Value of 300 *l.* and therefore he brings this Suit, and hath good and ſufficient Proof of the Premiſſes, when the Court will conſider thereof.

The Defendants plead a Recovery in a former Action, (to wit)

That in Michaelmas Term laſt, the Plaintiff and one S. B. impleaded them, and one J. S. now deceaſed.

And the ſaid *Thomas Kenſey*, and *Robert Fenwick*, by *Robert Bird* their Attorney, and the ſaid *John Howard*, and *John Fitch*, by *Thomas Pargiter* their Attorney, come and defend the Force and Injury, when, *and ſo forth*, and ſay that the ſaid *Henry* ought not to have his ſaid Action thereon againſt them, becauſe they plead, that lately, before the ſuing out of the ſaid original Writ of the ſaid *Henry* (that is to ſay) in the Term of St. *Michael* laſt paſt, the ſaid *Henry*, and one *Suſannah Barwell*, Spinſter, impleaded one *Robert Bird*, and them the ſaid *Robert Kenſey*, *Robert Fenwick*, *John Howard*, and *John Fitch*, and one *John Stephens* now deceas'd, in his Life-time, by the Names of *Robert Bird*, late of *London*, Gentleman, *Thomas Kenſey*, late of *London*, Vintner, *John Finch*, late of *London*, Bricklayer, and *John Stephens*, late of *London*, —— in the Court of Common Bench of our Sovereign Lord the King in an Action of *Treſpaſs*, in which Action they the ſaid *Henry*, and

Sets forth the Declaration.

and *Suſannah* in the ſame Term of St. *Michael* laſt paſt, in declaring here in the ſame Court of Common Bench of our ſaid Sovereign Lord the King, againſt *R. B.* and them the ſaid *T. K. R. F. J. H. J. F.* and the ſaid *J. S.* complain'd by the ſaid *Samuel Moor*, their Attorney, that they the ſaid *Robert Bird*, *T. K. R. F. J. H.* and *J. S.* on the 24th Day of *April*, in the 34th Year of the Reign of his ſaid Preſent Majeſty, with Force and Arms, *and ſo forth*, dug in the Soil of them the ſaid *Henry* and *Suſannah*, under the Foundation of their Houſe, ſituate in the Pariſh of St. *Dunſtan in the Weſt*, in the Ward of *Farringdon without*, *London*, and caſt forth the Earth proceeding from thence; by which digging of the Soil, and under the Foundation of the ſaid Houſe, and caſting forth the Earth proceeding from thence, a great Part of the Houſe, of them the ſaid *Henry* and *Suſannah* fell to the Ground, and the Remainder of the ſaid Houſe became totally disjoin'd, waſted and ſpoiled; and by reaſon thereof, they the ſaid *Henry* and *Suſannah*, not only loſt, and were deprived of all the Profit and Benefit of their ſaid Houſe for a long time, (to wit) from the ſaid 24th Day of *April*, in the ſaid Year, until the Day of the ſuing out of the ſaid original Writ of them the ſaid *Henry* and *Suſannah*, but alſo ſeveral Goods and Chattels of them the ſaid *Henry* and *Suſannah*, (to wit) one hundred and fifty Saddles, to the Value of 150 *l.* twenty Bridles, to the Value of 15 *l.* ten Dozen of Halters, to the Value of 5 *l.* five Dozen of Bits, to the Value of 30 *s.* five Dozen of Stirrops, to the Value of 4 *l.* (*and ſeveral other Goods there recited*) by the Fall of the ſaid Houſe, were totally broken, ſpoiled and deſtroyed, and became of no Value to the ſaid *Henry* and *Suſannah*, and did them other Wrongs, *and ſo forth*, to the great Damage, *and ſo forth*, and againſt the Peace, *and ſo forth*. Whereupon they the ſaid *H.* and *S.* declared, that they were endamag'd to the Value of 500 *l.* and thereof they brought their Suit, *and ſo forth*. And the ſaid *R. B.* in his own Perſon, and the ſaid *T. K.* and *R. F.* by *Theodore Wulpole* their Attorney, and the ſaid *J. F. J. H.* and *J. S.* by the ſaid *P. T.* their Attorney, then came and defended the Force and Injury, when, *and ſo forth*, and pleaded, that they were in no wiſe guilty of the ſaid *Treſpaſs*, as the ſaid *H.* and *S.* had declared againſt them; and thereof they put themſelves upon their Country, and the ſaid *H.* and *S.* did likewiſe the ſame; therefore the Sheriff was commanded that he ſhould cauſe to come hither in fifteen Days from the Day of St. *Martin*, Twelve, *and ſo forth*, by whom, *and ſo forth*, and who neither, *and ſo forth*, to recognize, *and ſo forth*, and becauſe as well, *and ſo forth*, at which Day came hither the ſaid Parties, *and ſo forth*, and the Sheriff made no Return of the Writ; therefore the Sheriff was as before commanded, that he ſhould cauſe to come hither, *on the Octave of St. Hillary*, Twelve, *and ſo forth*, to recognize in the Manner aforeſaid; at which Day the Jury were reſpited in the ſaid Action between the ſaid Parties, until the *Octave of the Purification of the Bleſſed Virgin Mary*, then next following, unleſs Sir *Francis Pemberton* his ſaid Majeſty's Chief Juſtice of the Common Bench aſſign'd by Force of the Statute, *and ſo forth*, had come before on *Saturday* the third Day of *February*, then next following at *Guildhall*, *London*; and on the ſaid *Octave of the Purification of the Bleſſed Virgin Mary*, the ſaid *H. B.* and *S. B.* by their ſaid Attorney,

The Defendants Plea.

The Iſſue.

The Award of the Venire Writ, Continuances.

* Note, this was left out of the Entry, but I apprehend through Miſtake, therefore have inſerted it.

The *Poſtea*.

and the ſaid *Robert Bird* in his own Perſon, * as alſo the ſaid *T.K. R.F. J.F. J.H.* and *J.S.* by their Attorney within contained came. And the ſaid Chief Juſtice before whom, *and ſo forth*, then return'd hither his Record in theſe Words: *Afterwards* the within named *H.B.* Eſq; and *S.B.* Spinſter; as alſo the within written *R.B. T.K. R.F. J.F. J.H.* and *J.S.* came by their ſaid Attornies within mention'd, on the Day, and at the Place within contained, before Sir *Francis Pemberton*, Knt. his Majeſty's Chief Juſtice of the Common Bench, and *Adam Baynes*, Gent. (he being aſſociated to him by Force of the Statute, *and ſo forth*) and the Jurors of the Jury whereof Mention is within made, being ſummon'd, ſome of them, (to wit) *J.M. S.H. A.S. R.D. T.T. R.E. R.C.* and *H.M.* come, and are ſworn upon that Jury; and becauſe the reſt of the Jurors of that Jury do not appear, therefore at the Requeſt of the ſaid *H.* and *S.* and by the Command of the ſaid Chief Juſtice, others of the Standers-by elected for that Purpoſe, are by the within Sheriffs of *London* newly appointed, the Names of whom are affiled in the within written Panel, according to the Form of the Statute in that Caſe made and provided; and the Jurors ſo newly appointed, (to wit) *T.A. J.H. T.J.* and *J.W.* being required are come, who being elected, tried, and ſworn together, with the ſaid other Jurors before impanelled and ſworn to declare the Truth of the within Contents,

Verdict that ſome of the Defendants are guilty.

ſay upon their Oaths, that the ſaid *T.K. R.F. J.F. J.H.* and *J.S.* are guilty of the within written Treſpaſs, in ſuch Manner and Form, as the ſaid *H.B.* and *S.* do within complain againſt them, and do aſſeſs the Damages of the ſaid *H.* and *S.* on the Occaſion within written, beſides their Expences and Coſts laid out by them about their Suit in this Cauſe, at 121 *l.* and for their Expences and Coſts, at 53 *s.* and 4 *d.*

That one is not.

and the ſaid Jurors upon their ſaid Oath further declare, that the ſaid *R.B.* is not Guilty of the ſaid Treſpaſs, as the ſaid *R.B.* has within alledged in his Defence;

The Judgment for the Plaintiff as to the Defendants found guilty.

therefore it was ſo conſidered that the ſaid *H.B.* and *S.* recover'd againſt the ſaid *T.K. R.F. J.F. J.H.* and *J.S.* their ſaid Damages aſſeſs'd by the ſaid Jury in the Manner aforeſaid; and alſo 16 *l.* 6 *s.* 8 *d.* awarded by this Court, by way of Increaſe to the ſaid *H.* and *S.* at their Requeſt, for their ſaid Expence and Coſts, which ſaid Damages in the Whole amount to 140 *l.* and that the ſaid *T.K. R.F. J.F. J.H.* and *J.S.* ſhould be taken for their Fine, *and ſo forth*;

For the Defendant that was acquitted.

and that the ſaid *Henry* and *Suſannah* ſhould be amerc'd for their falſe Claim againſt the ſaid *R.B.* for that the ſaid *R.B.* was above acquitted by the ſaid Jury of the Treſpaſs aforeſaid. *Afterwards*, (to wit) on the 19th Day of *June*, in the 35th Year of the Reign of his preſent Majeſty, the ſaid *H.* and *S.* came into this Court by *J.H.* conſtituted their Attorney by a ſpecial Warrant made to him for that Purpoſe, and acknowledged,

Satisfaction acknowledged by Warrant of Attorney.

that Satisfaction is made to them for the ſaid Damages; therefore the ſaid *T.K. R.F. J.F. J.H.* and *J.S.* are acquitted and diſcharg'd of the ſaid Damages, *and ſo forth*, as by the Record and Proceedings thereof remaining here of Record in this ſame Court of his ſaid preſent Majeſty may plainly appear.

An Averment of the Identity of the Houſes burnt down.

And the ſaid *T.K. R.F. J.H.* and *J.F.* further plead, that the ſaid Houſe mentioned in the Record of the ſaid Recovery, to be the Houſe of the ſaid *H.* and *S.* and the Meſſuage above ſpecified in the Declaration of the ſaid *H.* are one and the ſame, and not different Meſſuages and Houſes; and that the

Digging in the Soil under the Foundation of the Houſe of the ſaid *Henry* and *Suſannah*, and caſting forth the Earth proceeding from thence, by which ſaid digging the ſaid Soil and Earth under the Foundation of the ſaid Houſe, and caſting forth the Earth proceeding from thence, a great Part of the ſaid Houſe fell to the Ground, and the remaining Part of the ſaid Houſe became totally disjoin'd, waſted, and ſpoil'd, mentioned in the Record of the ſaid Recovery, and the pulling down, and laying to the Ground the Foundation of the ſaid Meſſuage next adjoining to the ſaid *Henry*, and the digging of the Soil and Ground there contiguouſly adjoining to the Meſſuage of the ſaid *Henry* into ſo much of, and ſo near the Foundation of the ſaid Meſſuage of the ſaid *Henry*, and caſting out the Earth proceeding from thence in ſuch Manner, that by digging the ſaid Soil and Ground, and caſting out the Earth proceeding from thence, a great Part of the ſaid Meſſuage of the ſaid *Henry* fell to the Ground, and the remaining Part of the ſame became totally disjoined, waſted and ſpoiled, whereof the ſaid *Henry* above complains againſt them, are the ſame Digging, and Caſting out of the Earth, and not ſeveral or different Treſpaſſes, Matters and Things; and that the ſaid falling down to the Ground of a great Part of the Houſe, and the totally disjoining, waſting and ſpoiling of the remaining Part of the ſaid Houſe, mentioned in the ſaid Record of the ſaid Recovery, and the ſaid falling down to the Ground of a great Part of the Meſſuage, and totally disjoining, waſting and ſpoiling, the remaining Part of the ſame, whereof the ſaid *Henry* above complains againſt them, are the ſame falling down, disjoining, waſting and ſpoiling, and not ſeveral or different; and that the ſaid *Henry Barwell*, named in the Record of the ſaid Recovery, and the ſaid *Henry Barwell* likewiſe named now in the ſaid Writ and Declaration thereon, are one and the ſame, and not different Perſons; and that the ſaid *T. K. R. F. J. F.* and *J. H.* named in the Record of the ſaid Recovery, and the ſaid *T. K. R. F. J. F.* and *J. H.* now named in the ſaid Writ and Declaration of the ſaid *Henry*, are one and the ſame, and not different Perſons; and that the ſaid Damages before aſſeſs'd in the ſaid former Action were aſſeſs'd and recover'd in full Satiſfaction of all the Damages ſuſtained by the ſaid *Henry Barwell*, on the Occaſion mentioned in the ſaid Declaration in the ſaid former Action, (to wit) at *London* aforeſaid, in the ſaid Pariſh and Ward; and this they are ready to verify; whereupon they pray Judgment, whether the ſaid *Henry* ought to have his ſaid Action thereof againſt them, *and ſo forth.*

and of the digging the Soil, &c.

An Averment of the Identity of the falling down of the Houſe.

An Averment of the Identity of the Perſon of the Plaintiff, the like of the Defendants.

That the Damages recovered in the former Action were in full Satiſfaction.

To which there was a Demurrer, *and ſpecial Cauſes aſſigned in this Manner*, (to wit) for that the ſaid *Plea* doth not directly, but evaſively anſwer to the ſeveral Matters above charg'd upon the ſaid *T. R. J. H.* and *J. F.* and that it is defective in Form, *and ſo forth*; to which there was a Joinder in *Demurrer.*

Upon the Argument of this Caſe the Queſtion was, whether the Recovery *pleaded above ſhould be a good* Bar; *and Chief Juſtice* Jones *held, that it ſhould not.* 1ſt, *Becauſe the* Treſpaſs *in the former Action, and that ſet forth in this Declaration, are not the ſame, and then the Averment of their Identity is repugnant and void; for in the former Action the Digging is laid to be* in the Plaintiffs Soil, and under

3 Lev. 179.

under the Foundation of their Meſſuage; *but in this Action it is laid to be only* ſo near the Foundation of the Plaintiffs Meſſuage. 2dly, *The former Action is brought by two Plaintiffs, for throwing down their Meſſuage, and ſpoiling their Goods; and this Action is brought by one of them only, and for the Loſs of his Trade for eleven Months; and in the other Action all the Time extends only to ſix or ſeven Months at fartheſt; and therefore the* Averment, *that the* Damages *in the firſt Action were given in full Satisfaction is repugnant and void. But* Windham, Charleton *and* Levinz, *were of the contrary Opinion, and* Judgment *was therefore given for the Defendant. And the Reaſons for their Judgment were,* 1ſt, *That in this Action it is not only ſaid ſo near, but that he dug into ſo much of, and ſo near the Foundation, and therefore that was of the ſame Signification, as to ſay he dug the Foundation it ſelf; for the Meſſuage did not fall until the Foundation it ſelf was dug; for if it had ſunk by only digging near the Foundation, then there was not any Time for digging the Foundation it ſelf; and therefore in digging the Foundation, and digging ſo much of, and ſo near the Foundation, are only ſeveral Ways of expreſſing the ſame Thing. And as to the* 2d Point *they ſaid, that in the former Action, the Plaintiffs called the Meſſuage their Meſſuage, and the Goods their Goods, and therefore it ought to be intended that they were Joint-Tenants in the Meſſuage, and Partners in the Goods. And as to the* 3d Point *they ſaid, that the Averment as to the Damages was not repugnant; for the Words that mention that they loſt all the Profit and Benefit of the Meſſuage, include the Trade in the Meſſuage; for by the tumbling down of the Meſſuage there could be no Trade uſed therein, and then of Neceſſity they muſt provide another Meſſuage for their Habitation and Trade, and ſo it is within the Words of having loſt all the Profit and Advantage of the ſaid Meſſuage; and in the other Action the Jury might, and ought to have given Damages for all that is laid in that Action, (to wit) for want of Habitation, Loſs in the Trade in the Meſſuage, as neceſſary Conſequents of the falling down of the ſame; as in an Action for Battery, the Jury always give Damages for the Cure, Pain, and Loſs of Time, as neceſſary Conſequents of the Battery without any ſpecial Damages laid in the Declaration; but ſuppoſe the Jury ought not to have given Damages for the Loſs of Trade in the Meſſuage, yet after they have done ſo, and it is ſo averred, and Judgment is thereupon given, it is a Bar in that Action until it be reverſed by Attaint; as in* Palmer *and* Lawſon's *Caſe in* B. R. *in an* Aſſumpſit *againſt an* Executor, *and he pleads a* Judgment *in* Debt *againſt him on ſimple Contract, although Debt did not lie in that Caſe, yet the Judgment was held to be a good Bar to an* Aſſumpſit *until it be revers'd; for which Reaſon, and to avoid Multiplicity of Suits, Judgment was given for the Defendant; but I don't find any Objection was taken to the Declaration.* 3 Lev. 180, 181.

Trinity the Thirty-fourth of King *Charles* the Second. *Roll* 2045.

Yorkſhire. *William Jefferſon*, late of *Skidby*, in the ſaid County, Yeoman, was attach'd to anſwer to *Samuel Jefferſon*, in an Action of *Treſpaſs upon the Caſe, and ſo forth*; and whereas the ſaid *Samuel*, by *Thomas Robinſon* his Attorney, complains, that whereas one *William Cocke* now deceaſed, had been in his Life-time, (that is to ſay) on the 30th Day of *January*, in the Year of our Lord 1658, at *Skidby*, ſeiſed in his Demeſne as of a Fee, of and in a Meſſuage, with the Appurtenances, ſituate and being in *Skidby* aforeſaid, held of the Manor of *Skidby* in the ſaid County, by a Copy of the Court-Rolls of the ſaid Manor, at the Will of the Lord, according to the Cuſtom of that Manor; and being ſo ſeiſed thereof, the ſaid *William Cocke*, afterwards, (that is to ſay) on the ſame 30th Day of *January*, in the ſaid Year, out of the Court of the Manor aforeſaid, according to the Cuſtom of the ſaid Manor, ſurrender'd the ſaid Meſſuage with the Appurtenances, by the Name of the *Graſs-Place*, built adjoining upon the Eaſt-End of a Field in *Skidby* aforeſaid, (amongſt other Things) into the Hands of the Lord of the ſaid Manor, by the Hands and Acceptance of *Thomas Thompſon* and *John Avis*, two of the Cuſtomary Tenants of the ſaid Manor, to the Uſe of the ſaid *Jane* then his Wife, for the Term of her Life, and after her Deceaſe to the Uſe of the ſaid *Samuel Jefferſon* his Heirs and Aſſigns; and the ſaid *William Cocke* being ſo ſeiſed of the ſaid Meſſuage, with the Appurtenances in the Manor aforeſaid, the ſaid *William*, afterwards, (to wit) on the firſt Day of *April*, in the Year of our Lord 1658, at *Skidby* aforeſaid, died ſeiſed of ſuch his Eſtate, after whoſe Death, (to wit) at a Court Baron of *William Wrench*, Gent. then Lord of the ſaid Manor of *Skidby*, held for the ſaid Manor at *Skidby* aforeſaid, on the fifth Day of *April*, in the Year of our Lord 1659, before *Robert Bethel*, Gent. then Steward of the ſaid Manor, the ſaid Surrender made as aforeſaid, was duly preſented and inrolled; and the ſaid *Jane* was then and there rightfully and lawfully admitted a Tenant (amongſt other Things) to the ſaid Meſſuage, and the Appurtenances for the Term of her Life, the Remainder thereof belonging to the ſaid *Samuel*, his Heirs and Aſſigns in Manner as aforeſaid, by Virtue of which ſaid Surrender and Admittance, the ſaid *Jane* enter'd into the ſaid Meſſuage, with the Appurtenances, and was ſeiſed thereof in her Demeſne as of a Freehold, for the Term of her Life, at the Will of the Lord, according to the Cuſtom of the ſaid Manor, (the Remainder thereof belonging as aforeſaid to the ſaid *Samuel*, his Heirs, and Aſſigns) and ſhe the ſaid *Jane* being ſo ſeiſed thereof, married the ſaid *William Jefferſon* at *Skidby* aforeſaid; whereby the ſaid *William Jefferſon*, and *Jane*, became ſeiſed of the ſaid Meſſuage, with the Appurtenances in their Demeſne, as of a Freehold, in Right of the ſaid *Jane*, for the Term of her Life, at the Will of the Lord, according to the Cuſtom of the ſaid Manor. And the ſaid *William* and *Jane* being ſo ſeiſed thereof, (the Remainder thereof, after the Deceaſe of the ſaid *Jane*, belonging to the ſaid *Samuel*, his Heirs and Aſſigns, in the Manner aforeſaid.) Nevertheleſs the ſaid *William Jefferſon* well knowing the Premiſſes, but contriving, and fraudu-

3 Lev. 128.

A Declaration in Caſe in the Nature of an Action for Waſte by him in Remainder for Life againſt the Leſſee for Years.

That W. C. was ſeiſed in Fee of Copyhold Lands of which the Place, &c.

And ſurrender'd to the Uſe of Jane his Wife for Life, and afterwards to the Uſe of Samuel Jefferſon, his Heirs and Aſſigns.

That Jane was admitted Tenant.

And married W. Jefferſon.

The Gravamen.

lently intending totally to deprive, and diſinherit the ſaid *Samuel* of the ſaid Meſſuage, with the Appurtenances, and alſo greatly to injure, diminiſh, and render of ſmall Value, the Eſtate and Intereſt of the ſaid *Samuel*, of and in the ſaid Meſſuage, with the Appurtenances; the ſaid *William* on the firſt Day of *February* in the 34th Year of the Reign of his ſaid preſent Majeſty, at *Skidby* aforeſaid, with Force and Arms, pulled down, and laid to the Ground, a Barn, Part of the ſaid Meſſuage, to the Value of 50 *l.* and then and there took, carried away, and ſold the Wood, Stones, Roofs, and other Materials of the ſaid Barn, and converted, and diſpoſed of the Money ariſing therefrom to his own Uſe; whereby the ſaid *Samuel* is not only greatly hurt and injured in his Eſtate and Intereſt, of and in the ſaid Meſſuage, with the Appurtenances, but alſo the ſaid *Samuel* is totally diſinherited and deprived of the above-mentioned Part of the ſaid Meſſuage, with the Appurtenances; and thereof he brings this Suit, and hath ſufficient Proof of the Premiſſes, when the Court will conſider thereof. *To which there was a* Demurrer, *and a Joinder thereto.*

3 Lev. 150. *And upon the* Argument *two* Objections *were made againſt the Action.* Firſt, *That no ſuch Action lies, for that the Lord Chief Juſtice* Coke, *upon the Statute of* Glouceſter, *relating to Waſte, ſaid, that at the Common Law, he in Reverſion had not any Remedy for Waſte committed by him poſſeſſed of the Term, becauſe it was the Folly of him ſeiſed of the Reverſion, that he had not taken Security againſt that by a Covenant.* Secondly, *That the Jury could not know what Damages to give, for that it was uncertain how long the Tenant for Life might live, and the Meſſuage may be repaired by her in her Life-time; and it ſeems that* Windham *and* Charleton *were ſtrongly of that Opinion; but* Pemberton *Chief Juſtice, and* Levinz, *were of the contrary Opinion; and it appears by the* Report, *that no Judgment was delivered thereon; but* Quære, *whether the Reaſons for the latter Opinion are not the beſt, (to wit) that* Coke *is to be underſtood according to the ſubject Matter of which he is ſpeaking,* i. e. *he hath not any Remedy by an Action for* Waſte; *and* Pemberton *ſaid, that a* Leſſor *at that Day might, without Doubt, relinquiſh his Remedy by an Action of* Waſte, *and take his Action upon the Caſe againſt the Leſſor for the* Waſte, 2 H. 4. 12. *a Copyholder may maintain an Action upon the Caſe againſt a Stranger who cut the Trees, and the Lord may have another Action of the Treſpaſs done to the Inheritance.* 19 H. 6. 45. 3 Cro. 461. Jeremy *againſt* Lowther. *Husband ſeiſed in Fee, in Right of his Wife, makes a Leaſe for Years, and the Leſſee burns the Houſe, the Husband may bring an Action, and by two Judges then in Court this Action will lie; notwithſtanding the* Objection, *that an Action of* Waſte *lay not at Common Law, and yet there the* Leſſor *might have ſecured himſelf by a* Covenant; *and in the Caſe here the Plaintiff is not a* Leſſor, *but a* Tenant in Remainder, *by a Copy of the Court-Rolls, with whom no Covenant could be made; and if he can have no Remedy by this Way, he can have none at all; and ſure it would be unreaſonable for him to be compelled to tarry until the Death of the Wife, to ſee if the Defendant would repair it in the mean Time; for perhaps in the mean Time, the Plaintiff, or Defendant might die, and then the Action being*

being a Tort *died with the Perſon. And as to the* Damages *not being able to be aſcertain'd, they may be ſo, as well as where a Man purchaſes an Eſtate with the* Covenant *from the* Vendor, *that its free from Incumbrances, and an* Eſtate *for* Life *is evicted; and obſerve in* 3 Mod. 92. *in the Caſe of the* Mayor and Commonalty of Norwich *againſt* Johnſon, *it is there held, that this Action would lie againſt an* Executor de ſon Tort *poſſeſſed of a Term; and it was ſaid by the Court, that it would be an infinite Trouble for him in the Reverſion to ſeek for his Remedy for the* Waſte, *if the Law oblig'd him to ſtay till there was a rightful Adminiſtrator; and that this* Statute of Glouceſter *was a* remedial, *as well as a* penal *Law, and therefore ſhall have a favourable Conſtruction.*

Sir **Lyonel Walden** againſt **Mitchell.**

2 Ventr. 263. **For Words of a Member of Parliament, calling him Papiſt and Penſioner.**

Huntingdonſhire. John Mitchell, late of *Huntingdon* in the ſaid County, *Maulſter*, was attach'd to anſwer to Sir *Lyonel Walden*, in an Action of *Treſpaſs upon the Caſe*; and whereupon the ſaid *Lyonel*, by *Robert Clark* his Attorney, complains, that whereas the ſaid *Lyonel* now is a good, true, pious, faithful, and honeſt Subject, and Liege Man, of our Sovereign Lord and Lady the King and Queen, and hath from the Time of his Nativity hitherto carried, behaved and govern'd himſelf as ſuch a good, true, pious, faithful and honeſt Subject, and Liege Man of our ſaid Sovereign Lord and Lady the King and Queen and their Predeceſſors, ought to do, and hath during all that Time, been held, eſteem'd, and reputed of a good Name, Character, Converſation and Behaviour, as well amongſt a great many worthy and faithful Subjects of our ſaid Sovereign Lord and Lady the King and Queen, and their Predeceſſors, as alſo among all his Neighbours and Acquaintance; and during all that Time hath been, and now is a true Profeſſor of the Proteſtant and reform'd Religion, eſtabliſh'd by the Laws of this Kingdom, profeſſing and exerciſing the ſame with great Integrity, and always frequenting and hearing divine Service in his own *Pariſh Church*, or in ſome other *Church*, *Chapel*, or uſual Place of *Common Prayer*, according to the Practice of the Church of *England*, and never was reconciled to the *Romiſh* Church, nor ever was a Profeſſor of the *Romiſh* Religion, or ever went to Maſs. And whereas the ſaid *Lyonel* was a *Burgeſs* or *Member* of *Parliament*, for the Town of *Huntingdon*, in the County of *Huntingdon*, in the Parliament of *Charles* the Second, our late Sovereign Lord the King of *England*, begun and held at *Weſtminſter*, in the County of *Middleſex*, on the 8th Day of *May*, in the 13th Year of his Reign, and during the ſaid whole Parliament to the Time of its Diſſolution, juſtly and faithfully ſerved as ſuch *Burgeſs* or *Member* of *Parliament*, and during all that Time, perform'd the Duty of his Truſt and Office of a Burgeſs or Member of the ſame Parliament; and the ſaid *Lyonel*, in order to perform the Truſt of his ſaid Office of *Burgeſs* and *Member* of the ſame *Parliament*, and to tranſact other Affairs, made and perform'd ſeveral Journies from the ſaid Town of *Huntingdon* to the Cities of *London* and *Weſtminſter*. Neverthele ſs the ſaid *John* in no wiſe Ignorant of the Premiſſes, but contriving, and malitiouſly intending, not only greatly to injure and detract-

Setting forth the Plaintiff to be a Proteſtant,

and never a Profeſſor of the Romiſh Religion;

that he hath been a Member of Parliament, and did his Duty therein juſtly.

That a Diſcourſe was had of the Plaintiff's Religion, and of his being a Member of Parliament.

The Words.

Of the Defendant's further Malice.

He ſpoke other Words.

detract the ſaid *Lyonel* in, and deprive him of his ſaid good Name, Character, and Reputation, but alſo to cauſe the ſaid *Lyonel* to be brought under the Pains and Penalties, publiſhed and provided by the Statutes of this Kingdom of *England*, againſt Papiſts and Subjects of this Kingdom, who frequent and hear Maſs; he the ſaid *John* on the 8th Day of *December*, in the Year of our Lord 1668, at *Huntindon* aforeſaid, in the ſaid County, in the open and publick Market at that Time held there, having a Diſcourſe with one *Thomas Waddington*, (then a Servant to the ſaid *Lyonel*) of and concerning the ſaid *Lyonel* and his Religion, and of his having been a *Burgeſs* or *Member* of the ſaid *Parliament*, for the ſaid Town of *Huntingdon*, in the Preſence and hearing of a great many Perſons, then met together in the ſaid publick Market; and being there Preſent, falſly and malitiouſly, openly, and publickly ſpoke, repeated, proclaim'd, and with a loud Voice publiſh'd and pronounc'd, to the ſaid *Thomas Waddington*, (then and there being a Servant to the ſaid *Lyonel*) theſe following falſe ſcandalous *Engliſh* Words of the ſaid *Lyonel*, (to wit) **your Maſter** (meaning the ſaid *Lyonel*) **is a Papiſt; when he** (meaning the ſaid *Lyonel*) **is at Home, he** (meaning the ſaid *Lyonel*) **goes to Church; but when he** (again meaning the ſaid *Lyonel*) **is at London, he** (again meaning the ſaid *Lyonel*) **goes to Maſs,** (meaning the Maſs perform'd in the *Romiſh* Church): Sir **John Cotton,** (meaning one Sir *John Cotton* of *Stratton*, in the County of *Bedford*, Baronet, another Burgeſs, or Member of the ſaid Parliament for the ſaid Town of *Huntingdon*, **and he** (again meaning the ſaid *Lyonel*) **were both Penſioners,** (meaning that the ſaid Sir *John Cotton*, and the ſaid *Lyonel* had received Penſions from his ſaid late Majeſty King *Charles* the Second, to conſent to, and give their Votes for the Paſſing of Laws and Statutes, to the Oppreſſion of his ſaid late Majeſty's Subjects) **all the Time of the Long Parliament,** (meaning the ſaid Parliament wherein the ſaid *Lyonel*, and the ſaid *John* had been Burgeſſes or Members, as aforeſaid). And the ſaid *John* of his further Malice, afterwards, (to wit) on the ſame Day and Year laſt mentioned at *Huntingdon* aforeſaid, upon another Diſcourſe, then and there had with the ſaid *Thomas Waddington*, (being then and there a Servant to the ſaid *Lyonel*) of and concerning the ſaid *Lyonel* and his Religion, and of his having been a Burgeſs or Member of Parliament for the ſaid Town of *Huntingdon*, in the Preſence and Hearing of a great many other Perſons being there aſſembled together in the publick and open Market, he the ſaid *John Mitchell* for the Purpoſe aforeſaid, falſly and malitiouſly, openly and publickly ſpoke, repeated, aſſerted, and with a loud Voice, publiſhed and pronounced theſe other falſe, feigned, and ſcandalous *Engliſh* Words following of the ſaid *Lyonell*, he the ſaid *Thomas Waddington*, then and there being a Servant to the ſaid *Lyonel*, as aforeſaid); (to wit) **Your Maſter** (meaning the ſaid *Lyonel*, whoſe Servant the ſaid *Thomas* then was, as aforeſaid) **is a Papiſt; when he** (meaning the ſaid *Lyonel*) **is in the Country, he** (again meaning the ſaid *Lyonel*) **goes to Church; but when he** (again meaning the ſaid *Lyonel*) **is at London, he** (again meaning the ſaid *Lyonel*) **goes to Maſs,** (meaning the ſaid *Lyonel* to have gone to hear Maſs perform'd in the *Romiſh* Church): Sir **John Cotton** (again meaning the ſaid Sir *John Cotton*) **and he** (again meaning the ſaid *Lyonel*) **were both Penſioners all the**

Time of the long Parliament; by Means of ſpeaking and publiſhing of which falſe, feign'd, ſcandalous and malitious Words, he the ſaid *Lyonel*, is not only greatly injur'd and prejudic'd in his good Name, Reputation and Character, but hath alſo been oblig'd and compell'd to expend ſeveral great Sums of Money, and undergon a great deal of Fatigue and bodily Labour, to falſify the ſaid Rumours ſpread of him the ſaid *Lyonel*, to the Damage of the ſaid *Lyonel* 200 *l.* and thereon he brings this Suit, and good Proof of the Premiſſes, when the Court will conſider thereof.

Upon Not guilty pleaded, and a Verdict for the Plaintiff, he had his Judgment.

2 Vent. 265.

Lut. 1612. **An Action upon the Caſe againſt the Biſhop's Chancellor, for not ſwearing one of the Church-wardens choſen by the Pariſhioners into his Office.**

Middleſex. *S. G.* complains of *J. W. Vicar General in Spiritual Matters* to the Reverend Father in God, *John*, by Divine Providence, Lord Biſhop of *Cheſter*, (being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King,) for this Cauſe, (to wit) that whereas he the ſaid *S.* (*ſuch a Day and Year*) at the Pariſh of St. *Peter's Cheſter*, in the City of *Cheſter*, was duly elected to the Place and Office of one of the *Church-wardens* of the Pariſh of St. *Peter* aforeſaid, and then and there offer'd himſelf to the ſaid *J.* who then was, and ever ſince hath been, the *Vicar General in Spiritual Matters*, and lawfully conſtituted principal Official to the Reverend Father in God, *John* by Divine Providence Lord Biſhop of *Cheſter*, and requeſted the ſaid *J.* to adminiſter to the ſaid *S.* the uſual Oath to be taken by him, as one of the Church-wardens of the ſaid Church; and the ſaid *J.* (to whom the Adminiſtration of ſuch Oath to be given to the ſaid *S.* as one of the Church-wardens of the ſaid Church, of Right belong'd,) well knowing the Premiſſes, but contriving, and malitiouſly intending unjuſtly to oppreſs the ſaid *S.* in this Particular, and altogether to deprive him of his ſaid Office, then and there did, and ever ſince hath unlawfully and malitiouſly refuſed to adminiſter ſuch Oath to the ſaid *S.* of which Injury committed, as aforeſaid, againſt the ſaid *S.* he the ſaid *S.* afterwards, (to wit) *ſuch a Term, in ſuch a Year*, in the Court of our ſaid Sovereign Lord the King, before the King himſelf, then being at *Weſtminſter*, in the County of *Middleſex*, humbly beſeeching the Aſſiſtance and Juſtice of the ſame Court, prayed Relief, and his ſaid Majeſty's Writ of *Mandamus* to be directed to the ſaid *J.* and thereby to command him, that he ſhould adminiſter to, and receive from the ſaid *S.* the uſual Oath of one of the Church-wardens of the ſaid Church, and admit him to the ſaid Place and Office of one of the Church-wardens of the ſaid Pariſh Church; and it was then and there granted to him. Whereupon afterwards, (that is to ſay) *ſuch a Day and Year*, there iſſued out of the ſaid Court, at the Proſecution of the ſaid *S.* his ſaid Majeſty's Writ of *Mandamus* directed to the ſaid *J.* his Official or Surrogate, or to any other Judge whatſoever competent in that Particular; by which ſaid Writ, his ſaid Majeſty reciting, that whereas the ſaid *S.* had been duly elected and choſen to the Place and Office of one of the Church-wardens of the ſaid Church of St. *Peter*, within the ſaid City of *Cheſter*, according to the Cuſtom of the ſaid Pariſh of St. *Peter*, within the ſaid City; and although the ſaid *S.* had preſented himſelf to the ſaid *J.* and offer'd to take his Oath for the Well-behaving himſelf in the ſaid Place and Office of one of the Church-wardens of the ſaid Pariſh Church before the ſaid *J.W.* Nevertheleſs the ſaid *J.W.* (to whom it of Right belong'd to adminiſter the Oath of Church-wardens of the ſaid Pariſh Church,) declined Receiving ſuch Oath from the ſaid *S.* or at leaſt unjuſtly deferr'd the ſame, to the great Damage and Injury of the ſaid *S. G.* and to the manifeſt Prejudice of his Condition, as his ſaid Majeſty had received Information by the Complaint of the ſaid *S.* Wherefore the ſaid *S.* beſought his Majeſty to order him proper Relief in this Particular; and our ſaid Sovereign Lord the King, being deſirous to provide for the ſaid *S.* due and ſpeedy Juſtice in this Particular, according to the Rules of Juſtice, commanded the ſaid *J.* as he had before commanded him, that he ſhould adminiſter to, and receive from the ſaid *S.* the Oath which a Church-warden of the ſaid Pariſh, within the ſaid City of *Cheſter*, had thentofore us'd to take, and which the ſaid *S.* ought to have taken before him; and that he ſhould without delay, under the Penalty of 80 *l.* for the Neglect thereof, admit the ſaid *S.* to the ſaid Place and Office of one of the ſaid Church-wardens of the ſaid Pariſh Church, or ſhould ſignifie to his ſaid Majeſty a Reaſon to the Contrary, leſt on his Default therein there ſhould happen to be a repeated Complaint made to his ſaid Majeſty; and in what Manner his ſaid Majeſty's Command ſhould be executed, he ſhould make appear to this Court, *on Tueſday next after the Morrow of All-Souls*, returning his ſaid Majeſty's Writ; which ſaid Writ afterwards, and before the Return of the ſame, (to wit) *ſuch a Day and Year*, was deliver'd to the ſaid *J.* (then, and yet Vicar General in Spiritual Affairs, and lawfully conſtituted Principal Official to the ſaid Biſhop,) to be executed in due Form of Law. And the ſaid *S.* then and there offered himſelf, and prayed the ſaid *S.* to receive him, and to adminiſter to him the uſual Oath of one of the Church-wardens of the Pariſh Church of St. *Peter*, and to admit and inſtitute the ſaid *S.* into the Place and Office of one of the Church-wardens of the ſaid Church, according to the Command of the ſaid Writ, which the ſaid *J.* then and there did, and ever ſince hath refuſed to do; and inſtead thereof, he the ſaid *J.* then being Vicar General, and Principal Official as aforeſaid, to the Prejudice of the ſaid *S.* made a falſe Return on the ſaid Writ, into the Court of our ſaid Sovereign Lord the King, before the King himſelf, (to wit) at *Weſtminſter* aforeſaid, in the Manner following, (that is to ſay) that the ſaid *S.* had not been elected and choſen to the Place and Office of one of the Church-wardens of the ſaid Pariſh Church, and for that Reaſon he did not, neither could he adminiſter the Oath, which had been uſually taken by the Church-wardens of the ſaid Pariſh Church, or admit the ſaid *S.* into the Place and Office of one of the Church-wardens of the ſaid Pariſh Church, as by the ſaid Writ, and the Return thereof remaining affiled on Record, in the Court of our ſaid Sovereign Lord the King, before the King himſelf at *Weſtminſter*, more fully may appear; by Means whereof the ſaid *S.* is totally deprived, of and from the Enjoyment of the ſaid Place and Office, and was oblig'd to lay out his Money therein to no manner of Purpoſe, to the Damage of the ſaid *S.* 100 *l.* and thereof he brings his Suit, and ſufficient Proof of the Premiſſes, when the Court will conſider thereof.

This Declaration is ſaid in *Lutwych* 1013. to have been drawn by *Pollexfen* and *Holt.*

A Declaration in an Action for Scandalum Magnatum brought by a Peer.

Middleſex. Henry Earl of *S.* one of the Peers and Noblemen of this Kingdom of *Great Britain*, by *Fotherly Baker* his Attorney, as well for our Sovereign Lord the King, as for himſelf, complains of *T. G.* Gent. one of the Attornies of his Majeſty's Court of Common Pleas, preſent here in this Court in his own Perſon, in an Action of *Treſpaſs upon the Caſe*, for this Cauſe, (to wit) that *whereas* in a Statute of our late Sovereign Lord *Richard* the Second, late King of *England*, in the Second Year of his Reign, amongſt other Things, "*It is ordain'd*, and ſtrictly prohibited under " great Pain, that none be ſo bold to deviſe, ſpeak, or relate of Pre- " lates, Dukes, Earls, Barons, and other Nobles and Great Men of his " ſaid Majeſty's Kingdom of *England*, nor of the Chancellor, Trea- " ſurer, or Clerk of the Privy-Seal, Steward of his Majeſty's Houſhold, " the Juſtices of the one Bench, or of the other, nor of any great Of- " ficers of the ſaid Kingdom, any falſe News, Lies, or any ſuch like " Falſhoods, whereby Debates and Diſcords might ariſe between the " Lords and the Commons, and whereof great Peril and Miſchief " might come to the Realm; and whomſoever ſhould ſo do, ſhould " have and incur the Puniſhment lately ordained for that Purpoſe, by " the Statute of *Weſtminſter* the Firſt, as in the ſaid Statute, it is more fully contain'd." Neverthele ſs the ſaid *T.* paying no Regard to the ſaid Statute, nor in any wiſe fearing the Puniſhment ordain'd thereby, but contriving to injure and prejudice the good Name, Condition, Credit, Dignity and Honour of the ſaid Earl, and to bring the ſaid Earl into great Diſpleaſure with his preſent Majeſty, and with the Noblemen and great Officers of that Part of this Kingdom of *Great Britain* called *England*, and alſo with ſeveral other Worthy Men, Subjects of our ſaid Preſent Majeſty, on the 10th Day of *November*, in the fifth Year of his ſaid Majeſty's Reign at *Weſtminſter*, in the ſaid County of *Middleſex*, in the Preſence and Hearing of ſeveral Liege People, of that Part of this Kingdom of *Great Britain* called *England*, with an Intent to defame and ſcandalize the ſaid Earl, falſly and malitiouſly deviſed, ſpoke, repeated, publiſh'd and proclaim'd divers falſe News, and horrid Lies of the ſaid *H.* being then and now Earl of *S.* and one of the Peers and Noblemen of that Part of this Kingdom of *Great Britian* called *England*, in theſe *Engliſh* Words following, (to wit) *my Lord of* S. (meaning the ſaid *H.* then and now Earl of *S.*) *is playing the Fool at* Coventry, *and I* (meaning the ſaid *T.*) *hope he will be hang'd, for he* (meaning the ſaid Earl) *deſerv'd it long ago, and my Lord* (meaning the ſaid Earl) *is a baſe and unworthy Man*; by means whereof the ſaid Earl is greatly prejudic'd and ſcandaliz'd in his Reputation, Honour and Dignity, and the ſaid Earl hath thereby loſt the Favour, Honour, and good Eſteem of our ſaid Sovereign Lord the King, and of other Noblemen of that Part of this Kingdom of *Great Britain* called *England*, which they before had and entertain'd for the ſaid Earl; and on that Occaſion, ſeveral Rumours and Scandals are ariſen and ſpread abroad amongſt a great many Peers and Noblemen, and other Subjects of our ſaid Sovereign Lord the King, within that Part of this Kingdom of *Great Britain* called *England*; and by Reaſon of the Premiſſes much Infamy and Diſcord aroſe, and is daily more and more likely to ariſe between the ſaid Earl, and ſeveral Noblemen and others, Subjects of this Kingdom, to the great Diſturbance of the Peace, and Tranquillity of this Kingdom, and in Contempt of the Laws thereof, and to the great Scandal and Injury of the ſaid Earl, and to the Damage of the ſaid Earl 1000 *l.* and contrary to the Form of the ſaid Statute; and therein he prays Relief, and hath good Proof of the Premiſſes, when the Court will conſider thereof.

The Pledges for Proſecuting } are { *John Doe*,
Richard Roe.

How againſt Perry.

Winford. Mich. the Eleventh of King *William* the Third.

Lut. 72, 93. **An Action for Words ſpoken of a Candidate for Member of Parliament before his Election.**

Glouceſterſhire. Thomas Perry, late of *Yate*, in the ſaid County, Grocer, was attach'd to anſwer to *John How*, Eſq; one of the Privy Council to her Preſent Majeſty our Sovereign Lady the Queen, in an Action of *Treſpaſs upon the Caſe*; and whereupon the ſaid *J.* by *B. H.* his Attorney, complains, that whereas he the ſaid *John* hath always been a good, true, faithful, honeſt, and ſincere Liege Man, and Subject, as well to his late Majeſty *William* the Third, late King of *England*, from the Time of his happy Acceſſion to the Throne and Government of this Kingdom of *England*, as alſo to her preſent Majeſty, and hath always been of a good Name, Character, Converſation and Condition, and hath been ſo accounted, known, and reputed, not only by his Neighbours, and other faithful Subjects of this Kingom of *England*, but alſo by the Peers and Noblemen of the ſame, and even by the late King himſelf; and the ſaid *J.* thereby gained to himſelf, and acquired ſo great a Reputation, Credit, and Eſteem with all his late Majeſty's faithful Subjects, but more eſpecially with the Gentlemen of great Honour, and Freeholders of the ſaid County of *Glouceſter*, Electors of the Knights of the ſaid Shire, Members of Parliament for the ſaid County; ſo that of their own Free-will and Choice, he had been made and appointed one of the Knights of the Shire for that County, and at ſeveral Parliaments of the ſaid late King, was one of the Members of the Houſe of Commons, and ſerved in the ſame, truly, faithfully, and honeſtly, with great Reputation and Credit, and continually endeavour'd with all his Might to ſerve the ſaid late King, and his People, for the publick Good of this Kingdom, and had done, perform'd and tranſacted ſeveral important Affairs, and always employ'd his Endeavours for the true Service and Intereſt, as well of his ſaid late Majeſty, as of all his faithful Subjects, more eſpecially oppoſing

Lewis the *French* King, and all others whatſoever Enemies to his ſaid late Majeſty King *William* the Third, their Favourers, and Adherents, and in every Thing as much as in him lay, always took care of, preferr'd and labour'd for the publick Good, as a true and ſincere Friend to his Country, and the Laws and Liberties of this Kingdom of *England*, and was always as much as in him lay, an Adverſary to and ſtrenuous Oppoſer of the exorbitant, and growing Strength and Power of the ſaid *French* King. And whereas his ſaid late Majeſty King *William* the Third, before the Speaking and Publiſhing the falſe and ſcandalous Words herein after ſpecified, (to wit) on the 13th Day of *November*, in the 13th Year of his Reign, ordain'd his Parliament to be held at his City of *Weſtminſter*, on the 13th Day of *December* then next following; and on the ſame 13th Day of *December*, a Writ of his ſaid late Majeſty iſſued out of his Chancery, directed to the Sheriff of *Glouceſter*, for the Electing two Knights of the Shire to ſerve at the then approaching Parliament, as Members for the ſaid County; and the ſaid *J.* at that Election intended to ſtand a Competitor or Candidate, for the Place of one of the ſaid Knights of the ſaid Shire, for the ſaid Parliament, and in and through the ſaid County there was a common Talk, and publick Report, that he ſhould then ſtand, and be choſen a Candidate, to be, as he before had been, one of the Knights in Parliament for the ſaid County. Nevertheleſs the ſaid *T.* well knowing the Premiſſes, but contriving, deſigning, and malitiouſly intending, unjuſtly to diſquiet the ſaid *J.* and in an extraordinary and grievous Manner, to hurt and injure him in his good Name, Character, Reputation and Eſteem, and to deprive the ſaid *J.* of the Favour, Love, and good Opinion, not only of the Gentlemen and Freeholders of the ſaid County, but alſo of all others, faithful Subjects to his ſaid late Majeſty, towards the ſaid *J.* with a malitious Intent, that the ſaid *J.* might never be choſen one of the Knights, or Members of Parliament for the ſaid County, or for any other Place whatſoever, lately and before the ſaid Election came on in the ſaid County, (to wit) on the third Day of *December*, in the 13th Year of his ſaid late Majeſty, the ſaid *Thomas*, in the Preſence and Hearing of ſeveral Freeholders of that County, and of ſeveral other Liege People of our ſaid Sovereign Lord the King, openly and publickly, falſly and malitiouſly ſpoke proclaim'd and publiſh'd certain falſe, ſcandalous, and opprobrious Words of the ſaid *J.* in the following *Engliſh* Words, (to wit) *Jack How* (meaning *John*, the now Plaintiff) *is an Enemy to the King and Kingdom*, (meaning the ſaid late King and this Kingdom of *England*,) *and is in the* French *Intereſt*,) and in theſe following *Engliſh* Words, (to wit) Mr. *How* (meaning the ſaid *John*,) *is an Enemy to the King and Kingdom*, (meaning the ſaid late King and this Kingdom of *England*,) *and is in the Intereſt of the* French *King*; moreover in theſe following *Engliſh* Words, (to wit) *How* (meaning the ſaid *John*,) *is in the* French *Intereſt of* France, and alſo in theſe *Engliſh* Words, (to wit) *Jack How* (meaning the ſaid *John*,) *is in the* French *Intereſt*; and further in theſe *Engliſh* Words following, Mr. *How* (again meaning the ſaid *John*,) *is in the Intereſt of the* French *King*; by means of Speaking, Proclaiming and Publiſhing of which falſe and ſcandalous Words, the ſaid *John* is not only grievouſly injur'd in his ſaid good Name, Character, Reputation, Credit and Eſteem, and fallen into great Scandal and Ignomy, with ſeveral faithful Subjects of his ſaid late Majeſty, and of her preſent Majeſty, and eſpecially with the Gentlemen and Freeholders of the ſaid County of *Glouceſter*, ſo that they would not, but altogether refus'd at the ſaid Election, to choſe him one of the Knights of Parliament, for that County; but alſo the ſaid *J.* is thereby greatly obſtructed in tranſacting ſeveral of his honeſt and lawful Affairs, to the Damage of the ſaid *J.* 1000 *l.* and thereof he brings his Suit, and good Proof of the Premiſſes, when the Court will conſider thereof.

For reſcuing a Diſtreſs for a Rent.

Glouceſterſhire. Edward Goodman, late of *Staverton*, in the ſaid County, Yeoman, was attach'd to anſwer to *Dorothy Burnham*, Widow, in an Action; that whereas the ſaid *Dorothy*, by *R.G.* her Servant, had cauſed a Cow to be taken at *Staverton* in the ſaid County, for a Rent due to her in Fee, and there impounded the ſaid Cow, according to the Law and Cuſtom of this Kingdom of *England*; wherefore the ſaid *Edward*, with Force and Arms broke the ſaid Pound, and took and carried away the ſaid Cow from thence, and did her other Wrongs, to the great Damage of the ſaid *Dorothy*, and againſt the Peace of our Sovereign Lord the King; and whereupon the ſaid *Dorothy*, by *J. B.* her Attorney, complains, that whereas certain Tenements, (to wit) one Meſſuage, and one Rod of Land, with the Appurtenances, were holden by one *T. M.* of one *W. B.* at the yearly Rent of 3 *s.* payable on the Feaſt of St. *Michael the Archangel* every Year, of which ſaid Rent the ſaid *W. B.* was ſeiſed by the Hands of the ſaid *T. M.* as by the Hands of his very Tenant; and being ſo ſeiſed thereof, the ſaid *W.* made his laſt Will and Teſtament at *Staverton* aforeſaid, and thereby (*amongſt other Things*,) gave and deviſed the ſaid Rent to the ſaid *Dorothy*, for her the ſaid *Dorothy* to have and hold the ſame for her Life; and afterwards the ſaid *W.* died at *Staverton*, ſeiſed as aforeſaid of the ſaid Rent, after whoſe Death ſhe the ſaid *Dorothy* was ſeiſed of the ſaid Rent in her Demeſne, as of a Freehold, for the Term of her Life, by Virtue of the ſaid Deviſe; and being ſo ſeiſed thereof, ſhe the ſaid *Dorothy* afterwards, (to wit) on the 27th Day of *October*, in the Year of our Lord 1698, by *R. G.* her Servant, cauſed the ſaid Cow to be taken and there impounded, according to the Law and Cuſtom of this Kingdom of *England*, in two Rods of Land, Parcel of the ſaid Meſſuage, and one Rood of Land at *Staveton* aforeſaid, for the ſaid yearly Rent for four Years being in Arrear, on the Feaſt of St. *Michael the Archangel* then laſt paſt, and unpaid to the ſaid *Dorothy*; and the ſaid *E.* afterwards, (that is to ſay) on the ſame 27th Day of *October*, in the ſaid Year of our Lord 1698, at *Staverton* aforeſaid, with Force and Arms, broke into the ſaid Pound, and from thence took and carried away the ſaid Cow, and did him other Wrongs, *and ſo forth*, to the great Damage, *and ſo forth*, and againſt the Peace, *and ſo forth*; whereupon ſhe declares that ſhe is injured and endamaged to the Value of 20 *l.* and thereof ſhe brings her Suit, and good Proof of the Premiſſes, when the Court will conſider thereof.

Alwayes againſt **Broome** and others.

Trinity the Seventh of King *William* the Third.

Suffolk. Thomas Broome, late of *Snape*, in the ſaid County, Inholder, and *Robert Davis*, late of *Tunſtall*, in the ſaid County, Yeoman, was attach'd to anſwer to *William Alwayes*, in an Action; Whereas the ſaid *W. A.* would have taken ſome Cattle doing him Damage, (to wit) five Hogs of the ſaid *Thomas Broome*, at *Snape* aforeſaid, and would have impounded them according to the Law and Cuſtoms of this Kingdom of *England*, and had impounded only one thereof; wherefore the ſaid *Thomas* and *Robert*, together with one *William Bankes*, late of *Snape* aforeſaid, Husbandman, with Force and Arms reſcued the ſaid four Hogs ſo as aforeſaid, not impounded at *Snape* aforeſaid, and with Force and Arms broke the ſaid Pound, and took and carried away the ſaid Hog that was impounded as aforeſaid, and did him other Wrongs, to the great Damage of the ſaid *W. A.* and againſt the Peace of our Sovereign Lord the King, and our Sovereign Lady *Mary* late Queen of *England*; and whereupon the ſaid *W. A.* by *W. B.* his Attorney, complains, that whereas the ſaid *W. A.* would have taken ſome Cattle doing him Damage, in five Acres of Land at *Snape* aforeſaid, (to wit) five Hogs of the ſaid *Thomas Broome*, and would have impounded them, according to the Law and Cuſtoms of this Kingdom of *England*, and had impounded one of them only at *Tunſtall*; wherefore the ſaid *Thomas* and *Robert*, together with, *and ſo forth*, on the 28th Day of *June*, in the Year of our Lord 1694, *and ſo forth*, with Force and Arms at *Snape* aforeſaid, reſcued the ſaid four Hogs ſo as aforeſaid not impounded, and with Force and Arms, *and ſo forth*, broke into the ſaid Pound, and took and carried away the ſaid Hog ſo impounded as aforeſaid, and did him other Wrongs, *and ſo forth*, to the great Damage, *and ſo forth*, and againſt the Peace, *and ſo forth*; whereupon he declares that he is injured and endamaged to the Value of 10 *l.* and thereupon he brings his Suit, and good Proof of the Premiſſes, when the Court will conſider thereof.

Lut. 1259. The Writ.

The Declaration that the Plaintiff would have diſtrained five Hogs, and would have impounded them, but had impounded one only. That the Defendant with others reſcued the ſaid four Hogs, and broke the Pound, and from thence took the Hog that was impounded.

And the ſaid *Thomas* and *Robert*, by *John Dawſon* their Attorney, come and defend the Force and Injury, when, *and ſo forth*; and the ſaid *Robert* pleads, that he is no wiſe guilty of the Premiſſes, whereof the ſaid *W. A.* above complains, and thereof he puts himſelf upon the Country, and the ſaid *W. A.* doth likewiſe the ſame; and the ſaid *Thomas*, as to coming with Force and Arms, and breaking the ſaid Pound above ſuppoſed to be broken, pleads, that he is in no wiſe guilty thereof, and thereof he puts himſelf upon his Country; and the ſaid *W. A.* doth likewiſe the ſame; and as to reſcuing the ſaid four Hogs, and taking and carrying away the ſaid impounded Hog above ſuppoſed to be done, whereof the ſaid *A.* by his Declaration above complains, the ſaid *Thomas* pleads, that the ſaid *W. A.*

Bar. The Defendant Davies pleads Not guilty, and Iſſue thereon. The Defendant B. pleads Not guilty as to breaking the Pound, and Iſſue thereon; and as to taking all the five Hogs he pleads, that the ſaid five Acres in which, &c. are his Freehold, wherefore he took the ſaid five Hogs out of the Cuſtody of the Plaintiff, which is the ſame Treſpaſs, &c.

ought not to have his ſaid Action againſt him, becauſe he ſays, that the ſaid five Acres of Land, with the Appurtenances, in which the ſaid five Hogs of the ſaid *Thomas*, (to wit) the ſaid four Hogs, and one Hog above-mentioned by the ſaid *W. A.* in the ſaid Declaration, to have been taken as aforeſaid, are, and at the Time of the taking, were the five Acres of Land, with the Appurtenances, called the *Home-Marſh*, in *Snape* aforeſaid, which ſaid five Acres of Land, with the Appurtenances are, and at the ſaid Time, when and *ſo forth*, were the Soil and Freehold of the ſaid *Thomas*; whereupon the ſaid *Thomas* at the ſaid Time when the ſaid Reſcue was ſuppos'd to be made, took, and carried away the ſaid five Hogs, out of the Cuſtody of the ſaid *W. A.* as it was lawful for him to do; which ſaid taking and carrying away the ſaid five Hogs done in the Manner and Form, and for the Reaſon aforeſaid, is the ſame Reſcue of the ſaid four Hogs, and Taking and Carrying away the ſaid one Hog, whereof the ſaid *W. A.* above complains; and this he is ready to verify; whereſore he prays Judgment, whether the ſaid *W. A.* ought to have his ſaid Action thereof againſt him, *and ſo forth*.

Replication, That he was ſeiſed in Fee of a Cloſe called the Liſt, being the ſaid five Acres in the Declaration, and ſo recites that Part of the Declaration, and traverſes, that they were taken in the HomeMarſh

And the ſaid *William* replies, that he ought not to be precluded from having his ſaid Action, by reaſon of any Thing above alledged, becauſe he ſays, that at the ſaid Time when, *and ſo forth*, he the ſaid *W.* was ſeiſed of a Cloſe of Land, with the Appurtenances, called the *Liſt*, in *Snape* aforeſaid, in his Demeſne as of a Fee, being the ſaid five Acres of Land, with the Appurtenances above-mentioned in the ſaid Declaration, and that the ſaid *William* had taken the ſaid Hogs doing him Damage, (to wit) in his Cloſe called the *Liſt*, and would have impounded them according to the Law and Cuſtom of this Kingdom of *England*, and had impounded one of them at *Tunſtall* aforeſaid; and that the ſaid *Thomas* and *Robert*, together with, *and ſo forth*, on the 28th Day of *June*, in the Year of our Lord 1694, with Force and Arms, at *Snape* aforeſaid, reſcued the ſaid Hogs ſo as aforeſaid not impounded, and with Force and Arms broke the ſaid Pound, and took and carried away the ſaid Hog that was impounded as aforeſaid, as the ſaid *William* above thereof complains againſt him, **without that**, That thoſe Hogs were taken in the ſaid five Acres of Land, with the Appurtenances called the *Home-Marſh*, as the ſaid *Thomas* and *Robert* above in pleading thereto have alledged; and this he is ready to verify: Whereupon in as much as the ſaid *Thomas* and *Robert* do above acknowledge the Breaking the ſaid Pound, and the Taking and Carrying away the ſaid one Hog, and the Reſcuing the Reſidue thereof, the ſaid *William* prays Judgment, and that his Damages on that Occaſion may be awarded to him, *and ſo forth*.

Rejoinder, That as to the Reſcue of the four Hogs, by the Replication ſuppoſed to have been taken in the Liſt new aſſign'd; and as to the Taking and Carrying away the ſaid one Hog, that the Plaintiff ought not to have his Action,

And the ſaid *Thomas*, as to the ſaid Reſcuing of the ſaid four of the five Hogs, above ſuppoſed by the ſaid *W. A.* in his Replication to have been taken by the ſaid *William*, doing him Damage in the ſaid Place new aſſign'd, called the *Liſt*, in *Snape* aforeſaid; and as to the Taking and Carrying away the ſaid one Hog above ſuppoſed by the ſaid *William* in his Replication to have been by him impounded for the ſaid Damage, above ſuppoſed to be done by the ſaid one Hog, in the ſaid new aſſign'd Place called the *Liſt*, in *Snape* aforeſaid, he ſays, that the ſaid *W. A.* ought not to have his ſaid Action thereof againſt him, becauſe he pleads by way of Rejoinder, that after the ſaid *W. A.* had taken the ſaid Hogs doing Damage in the ſaid new aſſign'd Place, and before that the ſaid *Thomas* had taken and carried away the ſaid Hogs out of the Cuſtody of the ſaid *W. A.* (to wit) on the 28th Day of *June*, in the ſaid Year of our Lord 1694, at *Snape* aforeſaid, he the ſaid *Thomas* offered to pay the ſaid *W. A.* 10*s.* of lawful Money of *England*, for the ſaid Damage done as aforeſaid by the ſaid Hogs, in the ſaid new aſſign'd Place, which ſaid 10*s.* were ſufficient Amends for the ſaid Damage done to the ſaid *W. A.* in the ſaid new aſſign'd Place, which ſaid 10*s.* the ſaid *W. A.* then and there did, and ever ſince hath refuſed to accept of, and would have then and there impounded the ſaid Hogs for the ſaid Damage done in the ſaid new aſſigned Place; for which Reaſon the ſaid *Thomas*, at the ſaid Time when, *and ſo forth*, took and carried away the ſaid five Hogs out of the Cuſtody of the ſaid *W. A.* at *Snape* aforeſaid, *as he might well do*; which ſaid Taking and Carrying away the ſaid five Hogs in the Manner and Form, and for the Reaſons aforeſaid, is the ſame Reſcue of the ſaid four Hogs, and the Taking and Carrying away the ſaid one Hog, taken by the ſaid *W. A.* as aforeſaid, doing Damage in the new aſſigned Place above-mentioned by the ſaid *William* in his Replication, and whereof the ſaid *W. A.* above complains; and this he is ready to verify; wherefore he prays Judgment, whether the ſaid *W. A.* ought to have his ſaid Action thereof againſt him, *and ſo forth*.

because that at the Time when the five Hogs were taken, the Defendant tender'd Amends.

To which there was a Demurrer, *and a* Joinder *in* Demurrer; *and the chief Exception that was taken was, that the Defendant in his* Bar *pleads, that the Place where the Cattle were taken was his Freehold, and by his Rejoinder pleads* Tender of Amends, *and ſo the Plaintiff's Counſel would have had it that it was therefore a* Departure; *but as to that the Court held, that the Pleading the* Tender of Amends *was not any* Departure, *becauſe it was pleaded to a Treſpaſs in the* new aſſign'd Place; *and the* Bar *by that new Aſſignment was gone.*

Another Exception was taken, that the Plaintiff had declared, that one of the Hogs was impounded, and the Defendant had ſaid they were all in the Poſſeſſion of the Plaintiff, and that then he tender'd him Amends, *but had not* travers'd *that one of them was impounded; for if one of them was impounded, the* Tender *as to that came too late; and altho' he had pleaded* Not guilty *to the* Pound-Breach, *yet that would not mend the Matter; for it might be that he did not break the* Pound, *becauſe the* Door *of the* Pound *might be* open, *and then it was no* Pound-Breach *to take the Hog out of it, yet the* Tender of Amends *as to that came too late; and of that Opinion it ſeems was the whole Court, for ſaying all the Hogs were in the Poſſeſſion of the Plaintiff when he* tender'd Amends, *was but Argumentative, and not any direct Anſwer, that one of the Hogs was not impounded before.*

Lut. 1262.

Another Exception was taken to the Writ, that it was in Part a Writ of Reſcue, *and in another Part, a Writ of* Pound-Breach, *which are two Diſtinct Writs in the Regiſter, but at another Day the Plaintiff had* Judgment *by the Opinion of the whole Court.*

A Declaration in Caſe by the Occupier againſt the Rector, for not taking away his Tithes ſet out and divided.

Bellum (to wit): *Robert Startup* complains againſt *John Dodderidge*, Clergyman, in an Action of *Treſpaſs upon the Caſe*, and there are Pledges for the Proſecution, (to wit) *John Doe*, and *Richard Roe*; and whereupon the ſaid *Robert*, by *G.E.* his Attorney, complains, that whereas the ſaid *John*, on the 23d Day of *June*, in the third Year of the Reign of his preſent Majeſty, was, and long before had, and ever ſince hath been, and now is, Rector of the Pariſh Church of *Whatlington*, in the County of *Suſſex*, and within the Juriſdiction of this Court; and *whereas* alſo the Tithes of Graſs, Corn and Hay, from Time to Time growing, renewing and ariſing within the ſaid Pariſh, are, and for ſo long a Time as there is no Remembrance of any Man to the Contrary, have been payable to the Rector of the ſaid Church for the Time being; and the Proprietors of any Graſs, Corn, or Hay growing, renewing and increaſing in the ſaid Pariſh, during all that Time have uſed, accuſtom'd, and ought, to divide, ſet out, and leave the Tithes of Graſs, Corn and Hay, divided from nine Parts thereof, for the Uſe of the Rector for the Time being; and the Rector of the ſaid Church for the Time being, at his own Coſts and Charges, within a convenient Time after the dividing, ſeparating, ſetting out, and leaving the ſaid Tithes, and Notice thereof given to him, hath uſed, and ought to carry away from off the Lands whereon ſuch Tithes have grown, been renewing and ariſing, the ſaid Tithes, ſo as aforeſaid divided, ſeparated, ſet out and left; and whereas the ſaid *Robert*, on the 24th Day of *June*, in the third Year of the Reign of her ſaid preſent Majeſty, was, and long before had, and ever ſince hath been, and now is, a Poſſeſſor and Occupier of a Cloſe of Land, with the Appurtenances called the *Kingſ-Hill*, otherwiſe *Kingſland-Meadow*, in *Whatlington* aforeſaid, and within the ſaid Juriſdiction, containing by Eſtimation eighteen Acres; and being ſo poſſeſſed thereof, the ſaid *Robert*, afterwards, (that is to ſay) on the 28th Day of *June*, in the Year aforeſaid, mow'd the Hay growing, renewing, and increaſing on the ſaid eighteeen Acres of Land lying at *Whatlington* aforeſaid, and within the Juriſdiction of the ſaid Court, and then and there made and ſet up the ſame in Cocks; and after the making the ſame into Cocks, he the ſaid *Robert* then and there, in a due and proper Manner, divided, ſeparated, and ſet out the 10th Part from the other nine Parts thereof, and left the ſame for the Uſe of the ſaid *John*, then and now Rector of the ſaid Church; and alſo the ſaid *Robert*, afterwards, (to wit) on the 29th Day of *June* in the ſaid Year, at *Whatlington* aforeſaid, and within the Juriſdiction of the ſaid Court, gave Notice thereof to the ſaid *John*, then and now Rector of the ſaid Church. Nevertheleſs the ſaid *John* well knowing the Premiſſes, but contriving, and maliciouſly intending to deprive and obſtruct the ſaid *Robert* from having and receiving the Profit of his ſaid Cloſe, did not carry away the ſaid Tithes of Hay, (to wit) twenty-five Cocks of Hay, divided, ſeparated,

parated, ſet out, and left for the Tithes of Hay of the ſaid Cloſe, but permitted the ſaid twenty-five Cocks of Hay to ſtand and remain upon the ſaid Cloſe for a long Time, (to wit) from the ſaid 29th Day of *June*, until the 26th Day of *Auguſt* next following, whereby the ſaid *Robert*, during all that Time, totally loſt, and was deprived of the Profit and Advantage of the ſaid Cloſe, to the Damage of the ſaid *Robert* 10 *l.* and thereof he brings his Suit, and hath good Proof of the Premiſſes, when the Court will conſider thereof.

Caſe againſt the Sheriff of Middleſex, for not taking ſufficient Pledges in Replevin.

Middleſex. John Saunders, Eſq; complains of Sir *S. G.* Bart. and Sir *R. B.* Knt. late Sheriff of the County of *Middleſex*, *for this Cauſe*, (to wit) That *whereas* the ſaid *John* on the 19th Day of *October*, in the Year of our Lord 1702, at the Pariſh of St. *Clement Danes*, in the ſaid County of *Middleſex*, was poſſeſſed of a *Bedſtead*, a *Bolſter*, a *Pillow*, ſix *Curtains*, (*then naming the reſt of the Goods*) to the Value of 200 *l.* as of his own Goods and Chattels: And whereas the ſaid *S.* and *R. the ſame Day, and Year*, were, and long before had been Sheriff of the ſaid County of *Middleſex*, and the ſaid *John* being ſo poſſeſſed of the ſaid Goods and Chattels, they the ſaid *S.* and *R.* being as aforeſaid the Sheriff of the ſaid County of *Middleſex*, having no Regard to the Duty of their ſaid Office, but contriving, and fraudulently intending to deceive and defraud the ſaid *John* of his ſaid Goods and Chattels, *the ſame Day and Year*, in the ſaid Pariſh of St. *Clement Danes*, in the ſaid County of *Middleſex*, under a Colour of their ſaid Office, (finding the ſaid Goods and Chattels at the ſaid Pariſh of St. *Clement Danes*) on a Plaint levied by one *W. Preſgrave*, who pretended the ſaid Goods and Chattels were his own Goods and Chattels, and that they of Right belong'd and appertain'd to him; and that the Goods and Chattels had been taken, and unjuſtly detain'd againſt Sureties and Pledges, cauſed the ſaid Goods and Chattels to be replevied from the Poſſeſſion of the ſaid *J. S.* and to be deliver'd to the ſaid *W. P.* without having or taking ſufficient Sureties or Pledges, or any ſufficient Security whatever, for his the ſaid *W. P.* proſecuting his ſaid Plaint againſt the ſaid *J. S.* for the ſuppos'd taking, and unjuſtly detaining the ſaid Goods and Chattels, and for making a Return of the ſaid Goods and Chattels to the ſaid *J. S.* if a Return of the ſame ſhould be awarded to him, as by the Law and Cuſtoms of this Kingdom of *England*, and the Duty of their ſaid Office they ought to have done; which ſaid Plaint afterwards by due Proceſs of Law, was tranſmitted into this Court of our ſaid Sovereign Lord the King, before the King himſelf, whereſoever he ſhould then be in *England*; and whereas alſo afterwards, (to wit) in *Eaſter* Term, in the ſixth Year of the Reign of his ſaid preſent Majeſty, he the ſaid *John Saunders* was thereupon ſummon'd into this Court of our ſaid Sovereign Lord the King, before the King himſelf at *Weſtminſter*, to anſwer to the ſaid *W. P.* in an Action wherefore he had taken the ſaid Goods and Chattels; and thereupon ſuch Proceedings were had, that it was adjudged by the ſame Court at *Weſtminſter*, on due Conſideration, that the ſaid *J. S.* ſhould have a Return irreplegiable of the ſaid Goods and Chattels detain'd from him as aforeſaid, which ſaid Judgment is, and now remains in its full Force and Virtue not revers'd or annulled; and that the ſaid Goods and Chattels ſo as aforeſaid, deliver'd to the ſaid *W.P.* by Virtue of the ſaid Replevin are eloign'd and embezill'd away to Places unknown, and not to be found, whereby the ſaid *John* cannot have the ſame return'd or deliver'd to him; and the ſaid *John* on that Occaſion hath totally loſt, and been depriv'd of his ſaid Goods and Chattels, and is without any Remedy therein, to the Damage of the ſaid *John* 200 *l.* and thereon he brings his Suit, and hath ſufficient Proof of the Premiſſes, when the Court will conſider thereof.

Caſe for breaking down the Plaintiff's Incloſure, whereby the Cattle of ſeveral Perſons eſcaped into the Plaintiff's Cloſes.

Wiltſhire. Sir *Anthony Aſhley Cooper*, Bart. complains of *Nicholas St. John*, Eſq; being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, for this Cauſe, (to wit) That whereas the ſaid *A.* on the third Day of *Auguſt*, in the 18th Year of the Reign of his preſent Majeſty *Charles* the Second, now King of *England*, was, and now is ſeiſed in his Demeſne, as of a Fee, of and in a Cloſe of Paſture containing 124 Acres, and of another Cloſe of Paſture containing 80 Acres, ſituate below the ſaid Cloſe, known by the Names of the *Purlieus*, otherwiſe *Ruſſells-Wood*, lying in *Lydiard Millicent*, in the ſaid County; which ſaid ſeveral Cloſes were on the third Day of *Auguſt*, in the ſaid 18th Year, and for ſeveral Years before had been, fenced and hedg'd about by the ſaid *A. A. C.* for the Preſervation of the Graſs reſpectively growing in the ſaid Cloſes: And whereas the ſaid Cloſe of Paſture containing 124 Acres now is, and for ſo long a Time, that there is no Memory of any Man to the Contrary, hath been near adjoining to a common Field called *Purton Common*, on the North-Eaſt, and North-Weſt Parts thereof; to another common Field, known by the Name of *Webb's Purlieu*, on the South-Weſt Part thereof; and which ſaid common Fields lying together, are not ſeparated or divided by any Hedges or Fences: And whereas the Graſs reſpectively growing in the ſaid two Cloſes of the ſaid *A. A. C.* hath yearly, for the Space of ſix Years now laſt paſt, been valued at 60 *l.* of lawful Money of *England*; Nevertheleſs the ſaid *N.* well knowing the Premiſſes, but contriving, and malitiouſly intending totally to deprive the ſaid *A.* of the whole Profit and Advantage of his ſaid Cloſes, on the third Day of *Auguſt*, in the ſaid 18th Year at *Lydiard Millicent* aforeſaid, broke down, and laid to the Ground the ſaid Hedges, (to wit) ten Perches of Hedge of the ſaid Cloſe, containing as aforeſaid 80 Acres, and from the ſaid third Day of *Auguſt*, in the ſaid 18th Year, until the 13th Day of *October*, in the 28th Year of the Reign of his preſent Majeſty, continued and kept the ſaid Hedges thus broken down, and laid to the Ground, whereby ſeveral Cattle, (to wit) Horſes, Bulls, Oxen, Cows, Sheep, Heifers and Calves, of ſeveral Perſons running and depaſturing in the ſaid common Fields, on the ſaid third Day of *Auguſt*, in the ſaid 18th Year, and at ſeveral other Days and Times, between the ſaid third Day of *Auguſt* and the ſaid 23d Day of *October*, entered out of the ſaid common Fields into the ſaid Cloſe of Paſture, containing as aforeſaid 124 Acres of the ſaid *A.* through the Gaps and open Places made by the breaking down, and laying to the Ground the ſaid Hedges; and the ſaid Cattle likewiſe went and eſcaped out of that

Cloſe to and in the ſaid other Cloſe of Paſture, containing as aforeſaid 80 Acres of the ſaid *A.* through the Gaps and open Places made by breaking down, and laying to the Ground the Hedges aforeſaid; and during that Time the ſaid Cattle fed on, trod down, and conſum'd the Graſs of the ſaid *A.* to the Value of 300 *l.* as aforeſaid, reſpectively growing in the ſaid Cloſes, whereby the ſaid *A.* during all that Time totally loſt, and was deprived of all the Profit and Advantage of the ſaid Cloſes, to the Damage of the ſaid *A.* 500 *l.* and thereof he brings his Suit, and hath good Proof of the Premiſſes, when the Court will conſider thereof.

Caſe againſt the Maſter of a Hoy for falling foul of, and ſinking the Plaintiff's Boat.

Middleſex. William Brown Complains of *John Davis*, being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, before the King himſelf, *for this Cauſe*, (to wit) That *whereas* the ſaid *W.* on the ſixth Day of *March*, in the fifth Year of the Reign of his preſent Majeſty at the Pariſh of *Chelſea*, in the ſaid County, was legally poſſeſſed of a Flat-bottom'd Boat, as his own Boat, then loaden with Dung, and riding at Anchor in the River of *Thames*, within the ſaid Pariſh; and the ſaid *J. D.* was then and there Maſter and Governour of a Barge —— then ſailing in the ſaid River *Thames*, within the ſaid Pariſh, towards the ſaid City of *London*; and that the ſaid *J. D.* then and there ſo careleſly, negligently, and unſkilfully manag'd and govern'd the ſaid Barge, that the ſaid Barge, for want of good and ſufficient Management thereof, then and there violently ran foul of, and ruſh'd upon the ſaid *William*'s Boat, being loaden as aforeſaid, ſo that the ſaid Barge broke and downed the ſaid Boat; and the ſaid *William* by Reaſon thereof, not only totally loſt the ſaid Dung loaden as aforeſaid, on Board the ſaid Boat, but alſo loſt, and was depriv'd of all the Uſe, Profit, and Benefit of his ſaid Boat, for the Space of ſix Days then next following, and was likewiſe oblig'd to lay out great Sums of Money in and about getting up, unloading and repairing his ſaid Boat; whereupon the ſaid *William* declares that he is injured and endamag'd to the Value of 30 *l.* and therefore he brings his Suit, and hath ſufficient Proof of the Premiſſes, when the Court will conſider thereof.

Caſe for not putting out a Buoy to the Defendant's Ship; whereby the Plaintiff's Ship ran upon her Anchor. Mich. 10. W. 3.

Middleſex. George Hawbank complains of *Matthew Trim*, being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, before the King himſelf, for this Cauſe (to wit) that whereas the ſaid *George* on the 23d Day of *September*, in the Year of our Lord 1697, in the Pariſh of *Stebonheath*, otherwiſe *Stepney*, in the ſaid County was, and now is, the Maſter of a Ship or Veſſel, called the *Herring*, being then and there in the ſaid River of *Thames* in the ſaid Pariſh and County; that River then being a navigable River, and the King's common High-way, which ſaid Ship or Veſſel was then and there moor'd a-ſhore in the ſaid Pariſh and County. And whereas the ſaid *Matthew*, the ſame Day and Year was, and long before had been, and now is, the Maſter of a Ship or Veſſel, call'd the *Robert and Samuel*, then and there being in the ſaid River, near to the ſaid Ship or Veſſel of the ſaid *George*; and the ſaid *Matthew* contriving, and malitiouſly intending, greatly to hurt and injure the ſaid *George*, caſt an *Anchor*, with a Rope thereto affix'd, out of the ſaid Ship or Veſſel called the *Robert and Samuel*, and ſo continu'd the ſame for the Space of thirty-ſix Hours then next following, and did not fix a *Buoy* to the ſaid *Anchor*, to ſhew where the ſaid *Anchor* was placed; by which the ſaid Ship called the *Herring*, afterwards, (to wit) the ſame Day and Year, in the ſaid Pariſh and County, at the Ebbing of the Tide, for want of a *Buoy* being fix'd to the ſaid *Anchor*, fell foul of the ſame, in the ſaid River of *Thames*, in the ſaid Pariſh and County, whereby the ſaid Ship, by falling foul of the ſaid *Anchor*, through the Default of the ſaid *Matthew*, in not having affix'd a *Buoy* to the ſame, was rent and bruiſ'd in ſuch a Manner, that the ſaid Ship was then and there ſunk; whereas according to the Cuſtom of *England*, uſ'd and approv'd of for ſo long a Time as there is no Remembrance of any Man to the Contrary, all Maſters of Ships, whoſe Ships have been riding at *Anchor* in any navigable River within this Kingdom of *England* have uſed, and during all that Time have been accuſtom'd, and ought to fix a *Buoy* to their *Anchors*, which hold their Ships; whereby other Veſſels being in ſuch Rivers, might by means of ſuch *Buoy* avoid ſuch *Anchors*, ſo that ſuch other Veſſels might receive no Damage thereby. And whereas the ſaid *George* afterwards, (to wit) on the 23d Day of *September*, in the ſaid Year laſt mention'd, at the ſaid Pariſh of *Stebonheath*, otherwiſe *Stepney*, in the ſaid County was, and now is the Maſter of another Veſſel called the *Herring*, being in the ſaid River of *Thames* in the ſaid Pariſh and County, which ſaid Ship was moor'd a-ſhore in the ſaid Pariſh and County: And whereas the ſaid *Matthew* was likewiſe then and there the Maſter of another Ship called the *Robert and Samuel*, lying in the ſaid River of *Thames*, in the ſaid Pariſh and County, near the ſaid laſt mention'd Ship of the ſaid *George*: Nevertheleſs the ſaid *Matthew* contriving and intending greatly to damage and injure the ſaid *George*, caſt an *Anchor* with a Rope fix'd thereto out of the ſaid Ship called the *Robert and Samuel*, into the ſaid River, and there continued it for the Space of twenty Hours then next following, and had not fix'd a *Buoy* to the ſaid *Anchor* of the laſt mention'd Ship, to ſhew where the ſaid *Anchor* of the ſaid laſt mention'd Ship of the ſaid *Matthew* was placed, by means whereof the laſt mention'd Ship of the ſaid *George*, afterwards, (to wit) on the ſame Day and Year, at the Pariſh aforeſaid, at the Ebbing of the Tide, for Want of a *Buoy*'s being fix'd to the ſaid *Anchor*, of the ſaid laſt mention'd Ship of the ſaid *Matthew*, then being in the ſaid River of *Thames*, in the ſaid Pariſh and County, fell upon the ſaid *Anchor* of the ſaid *Matthew* laſt mention'd, placed as aforeſaid in the ſaid River of *Thames*, in the ſaid Pariſh and County; whereby the ſaid laſt mentioned Ship of the ſaid *George*, loaden with Sea-Coal, fallen upon the ſaid *Anchor* laſt mentioned of the ſaid *Matthew*, was, through the Default of the ſaid *Matthew*, rent and bruiſ'd in ſuch a Manner, that the ſaid laſt mentioned Ship of the ſaid *George*, was then and there ſunk; whereupon the ſaid *George* declares that he is injured and endamaged to the Value of 200*l.* and therefore he brings his Suit, and ſufficient Proof of the Premiſſes, when the Court will conſider thereof.

Caſe by a Paſſenger againſt a common Carrier for Damages, in overturning his Waggon; whereby her Collar-bone was broke, &c.

Middleſex. ***Anne Nurton*** complains of ***Humphrey Paris***, being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, before the King himſelf, (*for this Cauſe*) (to wit) That whereas the ſaid *Humphrey*, on the firſt Day of *July*, in the fifth Year of the Reign of our Sovereign Lord *George* the Second, King of *Great Britain, and ſo forth*, was and for ſeveral Years before had and ever ſince hath been, and now is a common Waggoner, (to wit) to carry Goods, Wares, and Merchandizes in his Waggon for his ſaid Majeſty's Subjects for Hire, to and from the City of *London*, to the Town *Aylesbury*, in the County of *Bucks*; and whereas the ſaid *H.* on the ſaid firſt Day of *July*, in the Year aforeſaid, did, and long before had, and ever ſince hath been us'd and accuſtom'd, by him and his Servants, to carry and convey ſeveral Perſons, Subjects of our Sovereign Lord the King, for a reaſonable Price to be paid him for that Purpoſe, to and fro from the ſaid City of *London*, to the ſaid Town of *Aylesbury*, in a Waggon of the ſaid *Humphrey*. And whereas ſhe the ſaid *Anne*, on the Day and Year aforeſaid, at *London* aforeſaid, (to wit) in the Pariſh of St. *Sepulchres*, in the Ward of *Farringdon* without, at the ſpecial Inſtance and Requeſt of the ſaid *Humphrey*, enter'd into the ſaid Waggon, in order to be ſafely and ſecurely conveyed and carried from the ſaid City of *London*, to the ſaid Town of *Aylesbury*, for a reaſonable Price to be paid by the ſaid *Anne* to the ſaid *Humphrey* for that Purpoſe. And the ſaid *Humphrey*, the Day and Year laſt above-mentioned at *London* aforeſaid, took and received the ſaid *Anne* into the ſaid Waggon, in order to carry and convey her from the ſaid City of *London*, to the ſaid Town of *Aylesbury*. Nevertheleſs the ſaid *Humphrey* contriving and intending to defraud and injure the ſaid *Anne*, did not carry, nor convey her from the ſaid City of *London*, to the ſaid Town of *Aylesbury*, but the ſame Day and Year at *Kenſington* in the County of *Middleſex*, drove the ſaid Waggon in ſo careleſs and negligent a Manner, that the Waggon was overturn'd, and thereby the Collar-bone of the ſaid *Anne* was broke, her Shoulder-bone diſlocated, and her Arm very much bruiſ'd and bent; whereupon ſhe declares ſhe is injured and damaged to the Value of 100 *l.* and therefore ſhe brings her Suit, and ſufficient Proof of the Premiſſes, when the Court will conſider thereof.

Slipper againſt Maſon.

Hillary the Sixth of King *William* the Third. *Roll* 1203.

Action for an Eſcape of a Priſoner upon a Writ of Excommunication.
1 Lut. 121.

Norfolk. ***Richard Maſon***, late of *Nackton*, in the ſaid County, Eſq; was attached to anſwer to *Samuel Slipper*, in an Action of *Treſpaſs upon the Caſe, and ſo forth*; and whereupon the ſaid *Samuel*, by ***William Betts*** his Attorney, complains, that whereas *George Oxenden*, Doctor of Laws, the Principal Official of the Gratious Court of *Canterbury*, of the Arches of *London*, in a certain Cauſe upon an Appeal and Complaint lately depending before him in Judgment, and rightfully and lawfully proceeded on in the ſame Court, (that is to ſay) at *London*, in the Pariſh of St. *Mary le Bow*, in the Ward of *Cheap*, between *S. Slipper*, the Party *Appellant*, and *Querelant*, and one *W. Dade*, the *Appellee* and Party complained againſt, in a certain Eccleſiaſtical Cauſe, and under the Spiritual Juriſdiction, (that is to ſay) for ſubſtracting and not paying Tithes, in a juſt and lawful Manner of proceeding againſt *William Dade*, by reaſon of his manifeſt Contumacy and Contempt in not paying the Sum of four Pounds twelve Shillings and two Pence, of lawful Money of *England*, the principal Sum for Tithes, and the Sum of ſeventeen Pounds of like lawful Money of *England*, for Expences and Coſts of Suit, as well in the firſt as in the laſt Inſtances, amounting in the Whole, to the Sum of twenty-one Pounds twelve Shillings and two Pence, which the ſaid *W. Dade* taking no care to pay, either to the ſaid *Samuel Slipper*, or to his Proctor within a competent Time appointed for that Purpoſe, although the ſaid *William Dade* having been then lately admoniſhed, and having been three Times forewarned, and for a long and ſufficient Time expected, pronounced it Contumacy; and for the Puniſhment of his Contumacy, decreed him to be excommunicated, and in the Face of the Church, (the due Order of Law having been firſt obſerved in that Particular) cauſed and commanded him openly and publickly to be pronounced excommunicated; which ſaid Premiſſes, *Thomas* by Divine Providence Archbiſhop of *Canterbury*, Primate and Metropolitan of all *England*, afterwards, (that is to ſay) on the ſecond Day of *October*, in the Year of our Lord 1697, under the Seal of the ſame Court, ſignified to our ſaid Sovereign Lord the King, in his High Court of *Chancery* at *Weſtminſter*, in the ſaid County of *Middleſex*, and ſuch Proceedings were thereupon had, that afterwards, (that is to ſay) on the 26 Day of *October*, in the ninth Year of the Reign of his preſent Majeſty, there iſſued out of the ſaid Court of *Chancery* at *Weſtminſter*, againſt the ſaid *W.* his Majeſty's Writ, to take the Perſon therein ſpecified, to be excommunicated, directed to the then Sheriff of the ſaid County of *Norfolk*, by which ſaid Writ, the ſaid then Sheriff was commanded that he ſhould execute Juſtice on the Body of the ſaid *William Dade*, according to the Cuſtom of *England*, until the ſaid *William Dade* ſhould make Satiſfaction, as well for the Contempt of the Holy Church, as for the Injury committed againſt the ſaid *S. Slipper*, and in what Manner the ſaid Sheriff ſhould execute the ſaid Writ, he ſhould cauſe to be known to our ſaid Sovereign Lord the King, *on the Octave of St. Hillary* then next following, where-ever our ſaid Sovereign Lord the King ſhould be in *England*, that he might further cauſe to be done in the Premiſſes, that which of Right, and according to the Statute in that Caſe made and provided ought to be done, and in no wiſe to omit it; and that he ſhould have there that ſame Writ, which ſaid Writ afterwards, and before the ſaid *Octave of St. Hillary*, (that is to ſay) in the Term of St. *Michael* in the ſaid Year, was delivered to the ſaid *Richard* (he then being Sheriff of the ſaid County of *Norfolk*) to be executed in due Form of Law) by Virtue of which ſaid Writ, he the ſaid *Richard Maſon*, afterwards, and before the Return thereof, (that is to ſay) on the firſt Day of *December*, in the ſaid ninth Year, took and arreſted the ſaid *William* by his Body, at *Catton* in the ſaid County of *Norfolk*, and had and detained him there in his Cuſtody until the ſaid *Richard*

Or within a competent Time appointed for that Purpoſe.

That the Defendant was excommunicated.

That the Biſhop by a Significavit **ſignified the ſame to the King.**

Upon which a Writ de excommunicato capiendo **iſſued out.**

That the Sheriff took him by Virtue of that Writ,

Maſon contriving and malitiouſly intending to deprive the ſaid *Samuel* of his Remedy, for the obtaining the ſaid Sums of Money afterwards, (that is to ſay) on the firſt Day of *January*, in the ſaid ninth Year, permitted the ſaid *William* to eſcape and go at large where he pleaſed at *Catton* aforeſaid, without any Authority whatſoever, and without the Leave of any Biſhop or Archbiſhop, and without the Leave, and againſt the Will of the ſaid *Samuel*, or without any Security whatſoever given, to obey the Commands of the Church in due Form of Law; (the ſaid *Samuel* then, or yet not having had any Satisfaction for the ſaid Sums of Money, or any Part thereof) and the ſaid *William* hath ever ſince withdrawn himſelf to Places unknown to the ſaid *Samuel*; and by reaſon of the Premiſſes, he the ſaid *Samuel* is defrauded from all manner of Relief in obtaining the ſaid Sums of Money, to the Damage of the ſaid *Samuel* 50 *l.* and therefore he brings his Suit, *and ſo forth.*

And then let him eſcape.

This Action after ſeveral Exceptions in Arreſt of Judgment was held would lie; and for Maintenance thereof the following Caſes were cited. F. N. B. 47 b. Hob. 317. 3 Cro. 838. 1 Lev. 192. 1 *Keb.* 947. 1 Cro 291. 1 Rolls Abr. 110. 5 Co. Williams's *Caſe.* 2 Jones 132. Moor 648. 3 Cro. 652, & 877. 2 Bulſt. 236. Moor 334.

Palgrave, Bart. againſt **Windham**, Eſq;.

Caſe on the Statute of the 8th of Queen Anne for the better Security of Rents, and preventing Frauds by Tenants.

Norflok. Francis Windham, late of *Cromer* in the ſaid County, Eſq; was attach'd to anſwer to Sir *Richard Palgrave*, Bart. Adminiſtrator of all the Goods and Chattels which were the Lady *Anne Palgrave*'s, his deceaſed Mother, who died Inteſtate, in an *Action of Treſpaſs upon the Caſe, and ſo forth*: And whereupon the ſaid *Richard* by *Thomas Hare* his Attorney, complains, That whereas by a Statute publiſhed in the Parliament of our late Sovereign Lady *Anne*, late Queen of *Great Britain, and ſo forth*, held at *Weſtminſter*, in the County of *Middleſex*, on the 18th Day of *July*, in the eighth Year of her Reign, (amongſt other Things) it was enacted by the Authority of the ſaid Parliament, “ that from and after the firſt Day
“ of *May*, which ſhould be in the Year of our Lord 1710, no
“ Goods or Chattels whatſoever lying, or being in or upon any Meſ-
“ ſuage, Lands or Tenements, which were, or ſhould be demiſed for
“ Term of Life, of Years, at Will, or otherwiſe, ſhould be liable to
“ be taken by Virtue of any Execution, or Extent, or upon any
“ Pretence whatſoever, unleſs the Party at whoſe Suit the ſaid Exe-
“ cution ſhould be proſecuted before the Removal of ſuch Goods
“ from off the ſaid Premiſſes, by Virtue of ſuch Execution or Extent,
“ ſhould pay to the Landlord of ſuch Premiſſes, or his Bailiff, all
“ ſuch Sum or Sums of Money, which were, or ſhould be due for
“ Rent of the ſaid Premiſſes, at the Time of taking ſuch Goods
“ and Chattels, by Virtue of ſuch Execution, provided that the Ar-
“ rears of Rent did not exceed upwards of a Year's Rent, and in
“ Caſe the Arrears ſhould exceed a Year's Rent, then the ſaid Party,

Recital of the ſaid Act,

“ at whoſe Suit ſuch Execution ſhould be proſecuted, paying to the ſaid Landlord, or his Bailiff a Year's Rent, ſhould proceed to the Execution of the ſaid Judgment, as he might have done before the making of the ſaid Act. And the Sheriff and other Officer by the ſaid Act was to have Power, and was required to levy and pay to the Plaintiff, as well the ſaid Money ſo as aforeſaid paid for Rent, as alſo the Money in the ſaid Execution, as by the ſaid Statute in that Caſe made and provided, may (amongſt other Things) more fully and at large appear. And whereas the ſaid Lady *Anne Palgrave*, after the making the ſaid Act, (to wit) on the 16th Day of *June* 1712, had demiſed, and to Farm letten, to one *David Cook*, two Meſſuages, and 120 Acres of Land, with the Appurtenances ſituate, lying and being in *Norwood Birmingham*, *Town Birmingham*, and *Bodham*, in the ſaid County of *Norfolk*, for him the ſaid *David*, and his Aſſigns, to have and occupy from the Feaſt of St. *Michael*, then laſt paſt, to the full End and Term of one whole Year from thence next enſuing, and fully to be compleat and ended; and ſo from Year to Year as long as both Parties ſhould pleaſe, paying for the ſame yearly, as long as the ſaid *David* ſhould occupy the ſaid two Meſſuages, and 120 Acres of Land, with the Appurtenances, to the ſaid Lady *Anne Palgrave*, her Heirs and Aſſigns, the Rent or Sum of ſeventy Pounds of lawful Money of *Great Britain*, to be paid at the Feaſts of the Annunciation of the Bleſſed Virgin *Mary*, and St. *Michael* the Archangel by equal Portions; by Virtue of which Demiſe, the ſaid *David* entred into the ſaid two Meſſuages, and 120 Acres of Land, with the Appurtenances, and was poſſeſſed thereof, and occupied the ſame for the Space of two Years, and 70 *l.* of the ſaid Rent was due in Arrear and unpaid to the ſaid Lady *Anne*, for one whole Year, ending at the Feaſt of St. *Michael* the Archangel, in the Year of our Lord 1713. And whereas afterwards, (to wit) on the ſixth Day of *October*, in the 12th Year of the Reign of her ſaid late Majeſty, at *Norwood Birmingham* aforeſaid, (he the ſaid *Francis* then, and now being Chief Bailiff of the Dutchy of *Lancaſter*, in the ſaid County) by Virtue and Means of a Writ of *Fieri Facias*, on the Lands and Chattels of the ſaid *David*, proſecuted out of her ſaid late Majeſty's Court of Common Pleas, (the ſame Court then being at *Weſtminſter*, in the County of *Middleſex*) at the Suit of *Eraſmus Buck*, againſt the ſaid *David Cook*, upon a Judgment before had and obtained againſt him in the ſaid Court of Common Pleas, and directed to the then Sheriff of the County of *Norfolk*; and by Virtue of a Warrant in Writing from the ſaid Sheriff, ſealed with his Seal, directed to the ſaid *Francis Windham*, he the ſaid *Francis* within the ſaid Liberty, (to wit) at *Norwood Birmingham* aforeſaid, took the Goods and Chattels of the ſaid *David Cook*, that then were in and upon the ſaid Meſſuages and Lands, with the Appurtenances, to the Value of 200 *l.* and the ſaid *Richard* further ſays, that after the Taking, and before the Removal of the ſaid Goods and Chattels, by Means of the ſaid Warrant, (to wit) the ſame Day, Year, and Place laſt above-mentioned, ſhe the ſaid Lady *Anne Palgrave*, in her Life-time, gave Notice to the ſaid *Francis* of the ſaid Rent due to her as aforeſaid; and the ſaid Lady *Anne*, then and there demanded the ſaid Rent of the ſaid *Francis*, which he the

That the Inteſtate demiſed at Will,

to hold, &c.

paying, &c.

Entry of the Tenant,

who held it for two Years, and 70 l. for one Year's Rent was in Arrear,

That the Defendant, by Virtue of a Writ of Fieri Facias,

and a Warrant from the Sheriff,

took the Goods and Chattels.

That the Inteſtate gave the Defendant Notice of the Rent.

ſaid

The Breach.

ſaid *Francis* then and there refuſed to pay out of the ſaid Goods and Chattels. And ſo it was that the ſaid *Francis* not conſidering the ſaid Statute, or in any wiſe fearing the Puniſhment therein contained, but contriving, and fraudulently intending, craftily and ſubtilly to deceive and defraud the ſaid *Anne* in her Life-time; and the ſaid *Richard*, after the Deceaſe of the ſaid *Anne* in this Particular, although often requeſted, hath not paid to the ſaid *Anne*, or to the ſaid *Richard* after her Deceaſe, the ſaid 70 *l.* being in Arrear and unpaid to the ſaid *Anne* as aforeſaid, for the ſaid Rent for one whole Year, ending at the Feaſt of St. *Michael* the Archangel, in the Year of our Lord 1713, nor made any Satisfaction for the ſame; but the ſaid *Francis* afterwards, (to wit) on the ſixth Day of *October*, in the ſaid 12th Year of the ſaid late Queen, took, carried away, and removed off and from the ſaid Tenements the ſaid Goods and Chattels taken by means of the ſaid Warrant, and hath hitherto refuſed to pay the ſaid Rent, or make any Satisfaction for the ſame, either to the ſaid *Anne* in her Life-time, or after her Deceaſe to the ſaid *Richard* (to whom Adminiſtration of all and ſingular the Goods and Chattels, which were the ſaid Lady *Anne*'s at the Time of her Death, by *Thomas Tanner* Doctor of Divinity, lawfully conſtituted Principal Official to *Charles* Lord Biſhop of *Norwich*, was on the 11th Day of *June*, in the Year of our Lord 1716, at *Norwood Birmingham*, aforeſaid, granted in due Form of Law) and the ſaid *Francis* ſtill doth refuſe to pay to the ſaid *Richard* the ſaid 70 *l.* or to make him any Satisfaction for the ſame, to the Damage of the ſaid *Richard* 100 *l.* and thereof he brings his Suit, and hath good Proof of the Premiſſes, when the Court will conſider thereof; and he brings here into Court the ſaid Letters Adminiſtratorial, which teſtify the ſaid Commiſſion of Adminiſtration to the ſaid *Richard*, in the Manner as above ſet forth, *and ſo forth*.

Goram againſt Sweeting.

Michaelmas the Twenty-ſecond of King *Charles* the Second. *Roll* 367.

1 Saund. 200.
A Declaration upon a Policy of Inſurance.

London. *Francis Goram* complains of *John Sweeting*, being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, before the King himſelf, for this Cauſe, (that is to ſay) That *whereas* the ſaid *Francis*, on the 20th Day of *April*, in the Year of our Lord 1669, at *London* aforeſaid, in the Pariſh of St. *Mary le Bow*, in the Ward of *Cheap*, according to the Uſage and Cuſtom of Merchants, cauſed to be made and written a Policy of Inſurance, in which written Policy it is mention'd, that the ſaid *Francis Goram* made an Aſſurance, and cauſed himſelf to be aſſured, loſt or not loſt, from *London* to any Ports, and Places out of the Streights of *Gibralter*, at, to and again, up and down from Port to Port, and from Place to Place, in Trade, and at and from thence to *London*, upon the Tackle, Furniture, Ordnance, Artillery, Boat, and other Furniture, of and in the good Ship called the *Margaret of London*,

Reciting the Policy.

London, 150 Ton or thereabouts, whoſe Maſter, under God, for that Voyage, was *Henry Fairweather*, or whoſoever ſhould go for Maſter in the ſaid Ship, or by whatſoever Name or Names the ſaid Ship or Maſter ſhould be named or called, beginning the Adventure upon the ſaid Ship, *and ſo forth*, from and immediately following the Date of the ſaid Writing, and ſhould ſo continue and endure, until the ſaid Ship ſhould be arrived to any Port or Place whatſoever, out of the Streights of *Gibralter*; and during the ſaid Time of her Abode, and Stay there, at, to and again, up and down, from Port to Port in Trade, from Place to Place, upon the ſaid Ship, *and ſo forth*; and further until the ſaid Ship, together with all her ſaid Tackle, Ordnance, *and ſo forth*, ſhould be landed at *London*, and there moor'd at Anchor twenty-four Hours in good Safety; and by the ſaid Writing it was agreed, that the ſaid Ship, *and ſo forth*, for ſo much as concerns the inſured was, and ſhould be at all Times during the ſaid Voyage, rated and valued at the full Sum of 300 *l.* Sterling, without rendring any further Account for the ſame, for the Adventures and Perils which the ſaid Aſſurers were content to undergo, and had undertaken in the ſaid Voyage, were they of Men of War, Fire, Enemies, Pirates, Rovers, Jettizons, Letters of Mart and Counter-Mart, Captions and Seizures upon the Sea, Arreſts, Reſtrictions or Detentions of all Kings and People, of whatſoever Names, Condition, or Quality, Barretty of Maſter and Mariners, and of all other Dangers, Damages and Misfortunes, which had and ſhould happen to the Hurt, Detriment or Damage of the ſaid Ship, Tackle, *and ſo forth*, or of any Part thereof; and in Caſe of any Misfortune, it ſhould be lawful for the Aſſured, their Factors, Servants, and Aſſigns, to Sue for, Labour, and Travel, in and about the Defence, Safety and Recovery of the ſaid Ship, *and ſo forth*, or of any Part thereof, without Prejudice to the ſaid Aſſurance; to the Coſt of which, the ſaid Inſurers would each of them contribute, according to the Rate and Quantity of his Sum in the ſaid Aſſurance; and in this Manner the ſaid Aſſurers were content, and by the ſaid Writing, promiſed and obliged themſelves, each for his own Part, their Heirs and Executors, and their Goods, to the Aſſurers, their Executors, Adminiſtrators and Aſſigns, for the true Performance of the Premiſſes, confeſſing themſelves to be paid the Conſideration due to them for the Aſſurance by the ſaid *Francis Goram*, according to the Rate of 3 *l.* 12 *s.* *per Cent.* for ſix Months, and according to that Rate monthly, afterwards, and to the end of the ſaid Voyage, until Intimation ſhould be given for diſcharging the ſaid Adventure. And the ſaid *Francis Goram* ſaith, that after the Writing, and making of the ſaid Policy, (to wit) on the 18th Day *November*, in the Year of our Lord 1669, at *London* aforeſaid in the ſaid Pariſh and Ward, the ſaid *John Sweeting* had Notice of the ſaid Policy; and thereupon the ſaid *J. S.* on the ſaid 18th Day of *November*, in the ſaid Year laſt above-mentioned, at *London* aforeſaid, in the ſaid Pariſh and Ward, in Conſideration, that the ſaid *Francis Goram*, then and there agreed with the ſaid *J. S.* to pay to the ſaid *J. S.* according to the Rate of 3 *l.* 12 *s.* *per Cent.* for ſix Months, beginning the ſaid Adventure from the 21ſt Day of *Auguſt*, in the ſaid Year, and to perform all and ſingular the other Matters and Things contained in the ſaid Policy, on the Part of the Aſſured,

Mutual Promiſes.

Aſſured, to be performed for the Inſurance of 50 *l.* to be made by the ſaid *J. S.* according to the Tenor of the ſaid Policy; he the ſaid *J. S.* then and there agreed, and was content with the ſaid Policy of Aſſurance, beginning the ſaid Adventure from the ſaid 21ſt Day of *Auguſt*, in the Year laſt above-mentioned, (the Ship then being in good Safety) according to the Tenor and good Intent of the ſaid Policy; and the ſaid *J. S.* in Conſideration of the Premiſſes, then and there undertook, and faithfully promiſed the ſaid *Francis*, that he the ſaid *J. S.* for his Part, would well and truly perform all the Premiſſes contained in the ſaid Policy, on the Part of the Aſſured to be perform'd, as to the fifty Pounds, beginning the ſaid Adventure, from the ſaid 21ſt Day of *Auguſt*, in the Year laſt above-mentioned, (the ſaid Ship being then in good Safety): And the ſaid *Francis* in Fact ſays, that the ſaid Ship, on the 21ſt Day of *Auguſt*, in the Year laſt above-mentioned, was in good Safety, (to wit) at *London* aforeſaid, in the ſaid Pariſh and Ward; but that the ſaid Ship, Tackle, Ordnance, Artillery, Boat, and other Furniture, or any Part thereof did not land, or arrive in good Safety, from the ſaid Voyage at *London* aforeſaid, but afterwards, (to wit) on the 25th Day of *November*, in the Year of our Lord 1669 aforeſaid, in making her ſaid Voyage beyond Sea, towards *London* aforeſaid, being upon the High Seas, out of the Streights of *Gibralter*, the ſame were drown'd and deſtroy'd through the Perils of the Sea, and by the Violence of the Wind and Storms, (to wit) at *London* aforeſaid, in the ſaid Pariſh and Ward; whereupon afterwards, on the 11th Day of *November*, in the 21ſt Year of the Reign of his Preſent Majeſty *Charles* the Second, King of *England, and ſo forth*, the ſaid *Francis* gave Notice thereof to the ſaid *John Sweeting*, at *London* aforeſaid, in the ſaid Pariſh and Ward, and then and there, according to the Cuſtom of Merchants, renounced to the ſaid *John Sweeting*, and the other Aſſurers ſubſcribing the ſaid Policy, all his Intereſt in the ſaid Ship, and the other Premiſſes aſſured as aforeſaid; and then and there requeſted the ſaid *John* to pay to the ſaid *Francis*, the ſaid 50 *l.* aſſured as aforeſaid by the ſaid *John Sweeting*, which he the ſaid *John* ought to have paid to the ſaid *Francis* by reaſon of the Premiſſes, and according to the Cuſtom of Merchants. *Neverthеleſs* the ſaid *John Sweeting* having no Regard to his ſaid Promiſe and Undertaking, but contriving, and fraudulently intending, craftily and ſubtilly to deceive and defraud the ſaid *Francis Goram* in this Particular, did not undergo the Adventure of the ſaid Ship, Tackle, Ordnance, Artillery, Boat, and other Furniture, drowned and deſtroyed as aforeſaid, or any Part thereof as to the ſaid 50 *l.* nor hath yet paid to the ſaid *Francis* the ſaid 50 *l.* or any Part thereof, or as yet in any wiſe made him Satisfaction for the ſame, although the ſaid *John Sweeting* afterwards, (to wit) on the firſt Day of *March*, in the 22d Year of the Reign of his ſaid Preſent Majeſty, was by the ſaid *Francis Goram* often requeſted ſo to do at *London* aforeſaid, in the ſaid Pariſh and Ward; whereupon the ſaid *Francis* declares, that he is injured and endamaged to the Value of 100 *l.* and thereof he brings his Suit, and hath good Proof of the Premiſſes, when the Court will conſider thereof.

Averment, that the Ship was in good Safety at the Time of the Policy.

That ſhe was drowned with all her Tackle, &c. on the High Seas out of the Streights of Gibralter.

That the Plaintiff renounced all Claim to the ſaid Ship, &c.

The Breach.

The Imparlance.

And now at this Day, (to wit) on *Monday* next after three Weeks from St. *Michael*, this ſame Term, (to which Day the ſaid *John Sweeting* had leave to imparle to the ſaid Bill, and then to anſwer, *and ſo forth*,) as well the ſaid *Francis Goram* by his ſaid Attorney, as the ſaid *John Sweeting* by *Baſil Herne* his Attorney, are come before our Sovereign Lord the King at *Weſtminſter*; and the ſaid *John* defends the Force and Injury, when, *and ſo forth*, and ſaith, that the ſaid *Francis Goram* ought not to have and maintain his ſaid Action thereof againſt him; becauſe he ſaith, that the ſaid Ship, Tackle, Ordnance, Artillery, Boat, and other Furniture aforeſaid, after the making the ſaid Policy, and before the Day of exhibiting the ſaid Bill, (to wit) on the 20th Day of *July*, in the 22d Year of the Reign of his ſaid Preſent Majeſty, landed and arrived at *London*, (to wit) in the Pariſh of St. *Mary le Bow*, in the Ward of *Cheap*, in good Safety, from the ſaid Voyage; and the ſaid Ship with all her ſaid Tackle, Ordnance, *and ſo forth*, was there moor'd at Anchor twenty-four Hours in good Safety, **without that**, That the ſaid Ship, Tackle, Ordnance, Artillery, Boat, and other Furniture, was drowned and deſtroyed in the ſaid Voyage, in ſuch Manner and Form as the ſaid *Francis* hath above alledged; and this he is ready to verify; wherefore he prays Judgment, whether the ſaid *Francis* ought to have and maintain his ſaid Action againſt him, *and ſo forth*.

That the Ship, &c. arrived in Safety, and Traverſe **that the Ship, Tackle, &c. were all drowned.**

Demurrer.

And the ſaid *Francis* ſaith, that he ought not to be precluded from having his ſaid Action thereof againſt the ſaid *John*, by reaſon of any Thing above alledged by the ſaid *John* in his Plea, becauſe he ſays, that the ſaid Plea, in the Manner and Form, as the ſame is above pleaded by the ſaid *John*; and the Subſtance therein contained, are in Law inſufficient to preclude the ſaid *Francis*, from his having the ſaid Action thereof againſt the ſaid *John*, to which Plea the ſaid *Francis* is under no Neceſſity, or in any wiſe bound by the Law of the Land to make Anſwer; and this he is ready to verify; whereupon, for want of a ſufficient Plea in this Particular, the ſaid *Francis* prays Judgment, and that his Damages occaſioned by the Premiſſes, may be awarded to him, *and ſo forth*, and for Cauſes of Demurrer in Law to the ſaid Plea, he the ſaid *Francis*, according to the Form of the Statute in that Caſe made and provided, ſhews to, and lays before this Court of our Sovereign Lord the King this following Reaſon, (to wit) for that the ſaid Plea is argumentative, negative pregnant, uncertain, and defective in Form.

2 Saund. 205.

To which there was a *Joinder* in *Demurrer*, and Judgment for the Plaintiff.

Caſe.

The Objection *that was taken on Behalf of the Plaintiff, was to the* Traverſe *in the Defendant's Plea; for as it was taken, if any of the Things therein enumerated arrived in Safety, as if the Ship it ſelf was ſafely Landed, and all the Goods and Merchandizes, and all the Tackle, Ordnance,* &c. *had been loſt, whereby, according to the Policy, the Plaintiff ought to have had Satiſfaction; yet if the* Iſſue *had been taken upon the Defendant's Traverſe, it would have been againſt the Plantiff; and this Action being*

being only for Damages, *according to the Loſs that the Plaintiff had ſuſtained, every Part ought to have been put in* Iſſue; *but here unleſs the Plaintiff proves that the Ship, and all the other Things are loſt, he will recover for no Part; and if the Defendant proves, that a Cable, or an Anchor, arriv'd in Safety, he would be acquitted of the Whole, if the Plaintiff had taken* Iſſue *on that* Traverſe.

But it was argued by the Defendant's Counſel, that in this Policy there were two Clauſes; Firſt, *That if the Ship, or Tackle were damnified, the Plaintiff might labour to ſave them, and the Defendant was to pay his Proportion of the Charges of it.* Secondly, *That if the ſaid Ship, Goods,* and ſo forth, *ſhould be totally loſt, then the Defendant was to pay the* 50 *l. and here the Plaintiff hath averred a total Loſs of the Ship and Goods, for which he Demands the* 50 l. *and the Plaintiff having averred in the Copulative, that the ſaid Ship, Tackle, Ordnance, Artillery, Boat, and other Furniture, were totally loſt, he hath thereby given Advantage to the Defendant to* traverſe *it preciſely as he alledged, and that he ought not to recover Damages on this Breach; but notwithſtanding what was alledged by the Defendant's Counſel, the Court were of Opinion for the Plaintiff, and ſaid, the Defendant might prove, that ſo much and no more were loſt, in Mitigation of Damages upon the* Writ of Enquiry; *and the Caſes in the Margin of the Book are as follows.* S. C. 2 Keb. 717, 722. vide Molloy, Lib. 2. 7. 3 Lev. 320. 4 Mod. 58. 1 Show. 320. 2 Salk. 443. vide 2 Salk. 361, 629, 640. Vaug. 15, 16, 17. Ray. 199. 1 Vent. 101, 127. 1 Lev. 192. 2 Lev. 112. 1 Saund. 207, 267, 312. 1 Mod. 72. 2 Show. Pal. 380, 381. Hob. 103. 2 Saund. 180, 181, 295. 1 Lev. 58. 2 Sho. Caſe 42, 82. N. Lut. 247. 10 Co. 116, 117. 4 Co. 5, 6, 7. Ante 2, 6, 17. Poſt 379. poſt 282.

Turbervil againſt **Stamp.** 2 *Salk.* 724.

Dorſetſhire. Thomas Turbervil, Jun. Eſq; complains of *John Stamp*, Gent. being in the Cuſtody of the Marſhal of the *Marſhalſey* of our Sovereign Lord the King, before the King himſelf, for this Cauſe, (to wit) That whereas according to the Law and Cuſtoms of this Kingdom of *England*, hitherto uſed and approved of, every Man of this Kingdom, by Day and Night, is bound to keep his Fire ſafely and ſecurely, leſt for want of due Care of ſuch Fire, any Damage might any wiſe happen to any Perſon of the ſame Kingdom. And whereas the ſaid *Thomas* on the ſixth Day of *April*, in the ninth Year of the Reign of our Sovereign Lord, *William* the Third, King of *England, and ſo forth*, was poſſeſſed of a Cloſe of Furze-Ground, lying and being in the Pariſh of *Stoke*, in the ſaid County; and whereas the ſaid *John*, on the Day and Year above-ſaid, was likewiſe poſſeſſed of another Cloſe of Furze next adjoyning to the ſaid Cloſe of the ſaid *Thomas*, in the ſaid Pariſh and Ward; he the ſaid *John*, the Day, Year and Place above-mentioned, ſo negligently

Caſe for not keeping of the Defendant's Fire carefully, whereby the Plaintiff's Furze was burnt and deſtroyed.

negligently, and careleſly kept his Fire in the Cloſe of Furze of the ſaid *John*, that for want of due Care of the ſaid Fire, the ſaid Furze of the ſaid *Thomas* then growing, and being in his ſaid Cloſe was burnt down and conſumed, to the great Damage of the ſaid *Thomas*, and contrary to the ſaid Cuſtom; whereupon he declares he is injured and endamaged to the Value of 40 *l.* and thereof he brings his Suit, and hath good Proof of the Premiſſes, when the Court will conſider thereof.

1 Salk. 13. After a Verdict it was objected, that the Cuſtom extends only to Fire in his Houſe or Curtilage, which may be ſaid to be in his Power; but it was anſwered by the Court, that the Fire in his Field, is as much his Fire, as that in his Houſe; and as he made it, he muſt ſee it does no Harm, or anſwer the Damages if it does.

Readings and Obſervations on Actions upon the Caſe, together with an Abridgment of the Caſes in the Reports.

ACTIONS on the Caſe are to be brought, for a Satisfaction in Damages for Injuries done to a Man, either with Reſpect to his own Perſon, or the Perſons of thoſe in whom he has an Intereſt, and for Injuries done to his Property, or to the Property wherewith he is entruſted by Law for the Benefit of others.

Actions on the Caſe which relate to his own Perſon, or the Perſons of thoſe in whom he has an Intereſt, and ſo relate to him by Conſequence, are, Firſt, For Injuries that immediately deprive him of his Liberty wrongfully; as for procuring him to be impriſon'd without a Cauſe, or which tend to deprive him of his Life or Liberty, or to bring him under ſome corporal or pecuniary Puniſhment, charging him with the Breach of ſome poſitive or penal Law.

Secondly, By ſlandering him in his good Name and Reputation, whereby he may loſe the Converſation and Acquaintance of the ſober Part of Mankind, or otherwiſe ſlandering him in his Trade or Profeſſion, tending to deprive him of the Means of getting his Livelihood, or in his Office or Dignity, or both; and that by Words, or Writing, the Contents whereof are pernicious Slander.

Thirdly, For beating or hurting his Servant, and thereby diſabling him to do his Work. *Brownl.* 205. *Yelv.* 89, 90.

As if a Man ſends his Servant of an Errand, and a Perſon digs a Pit in his Way, into which the Servant falls and hurts himſelf, the Maſter may bring this Action. 2 *Bulſtrode* 334.

Actions upon the Caſe for Injuries relating to a Man's Property may be thus conſider'd; That as a Man is capable of acquiring Property, ſo he hath by Law a Right to have it preſerved to him; and the Law with Regard to the Preſervation of Property, hath theſe three following Rules relating thereto.

First, *That no Man is to deprive another of his Property, or wilfully to do a Damage thereto, nor diſturb another in the Enjoyment thereof.*

Secondly, *Every Man by the Rules of Law is bound to take due Care and Preſerve his own Property, ſo as the Neglect thereof may not tend to Injure his Neighbour.*

Thirdly, *Every Man is ſo to uſe and enjoy his own Property, that he does not, in the manner of his Uſe and Enjoyment thereof, do a Damage to the Property of his Neighbour.*

Under the Firſt of theſe fall Actions of Trover, and for Diſturbances and other Wrongs, which work an Injury by Maleſeazance. Under the Second of theſe naturally follow Actions for not repairing a Partition-Wall, Fences, and ſuch like. And under the Laſt of theſe will follow ſuch as ariſe from a Man's Miſuſe of his Property; as if a Man builds a Houſe upon his Ground, he muſt not build it in ſuch a Manner as to deſtroy the ancient Lights of his Neighbour; nor can he make Dams in

his

his own Ground, whereby the Water overflows the Fields of another Perſon; or make a Drain in his own Ground, which carries Filth or noiſome Soil into another's Yard; and there are a Multitude of other Injuries that ariſe from the Breach of this Rule, for which this Action may be brought.

And as a Man is capable of acquiring Property, ſo is he of making Contracts relating thereto, and the Law wills, that every Man ſhould perfom his Word and Contract with another, ſo far, as it is to do and perform that which is Right and Juſt.

And every Contract is defined to be *quaſi Actus contra Actum*, and therefore in every Contract there muſt be *quid pro quo*. 1 Co. Inſt. 47. *b.*

Which Word *Quid* ſignifies the Conſideration or Ground for the *Quo* or the Promiſe; and the Breach of that Promiſe made upon a good Conſideration, is the Foundation of the Party's Complaint, and with Reſpect to Actions founded upon Contracts, ſee more hereafter under the Title *Actions upon the Caſe* for not performing of Promiſes.

And here it is to be obſerv'd, that as Laws are the Sinews of Government, and the very Hinges or Cements of Society, it is the Duty of all thoſe that are in Office, and have the Execution of the Laws, that they execute their Offices duly and uprightly, and according to the Tenor of thoſe Laws, with the Execution of which they are ſo intruſted; and under this Head will properly fall ſuch Actions as lie againſt Sheriffs, and ſuch other Officers, for Wrongs and Injuries ariſing from the undue Execution of thoſe Laws that they are entruſted to execute.

And as ſuch Officers are duly and uprightly to execute ſuch Laws; ſo are they not to be moleſted or hindred therein, or any ways prevented from the due Execution thereof by Force or Fraud, or in any other Manner howſoever; if they are, the Perſon ſo offending is liable to render a Satisfaction in Damages for the ſame; under which Head may be reckon'd Actions of Reſcue, Eſcape, &c. or for Diſturbance of ſuch Officers in the due Execution of their reſpective Offices, and ſuch like in any manner howſoever.

Another Species of this Action, is that which ariſes from the Duty and Obligation incumbent upon all Perſons of any Trade or Profeſſion whatſoever, to act therein according to the Rules of Juſtice.

For as Officers entruſted with the Laws relating to the Publick, are to carry themſelves juſtly and uprightly; ſo every Man, of what Trade, Art, Myſtery or Profeſſion ſo ever, is to exerciſe ſuch Trade, Art, Myſtery and Profeſſion, with due Care, Diligence and Induſtry, and without Fraud or Deceit; ſo that he neither wilfully, negligently, or fraudulently exerciſe ſuch Trade, Art, Myſtery or Profeſſion, to the Damage of any Perſon whatſoever, who has entruſted any thing to his Care in his Profeſſion, or deals with him in buying and ſelling; and under this Head will naturally follow Actions againſt Attornies, Apothecaries, Carriers, Innkeepers, Smiths, and all others of any Trade, Art, Myſtery, or Profeſſion, who fraudulently, wilfully, or negligently exerciſe their Trade or Employments, to the Injury and Damage of ſuch Perſon ſo employing or trading with them.

Another Species of this Action is for not performing of Contracts, or doing Injuries to another that do not immediately relate to his own Property, but to the Property with which he is entruſted for the Benefit of others, as thoſe Actions which may be brought by and againſt Executors or Adminiſtrators.

And having here laid down the Manner, in which Actions upon the Caſe are intended to be treated of, what is here ſaid before, is only intended that the Reader might have a clear Perception of every particular Subject that follows; and the Caſes in the Books are placed and diſtributed under the following Heads.

Firſt, **Of Actions for falſly and maliciouſly proſecuting the Plaintiff without a Cauſe, or cauſing him to be indicted for a Crime ſuppoſed to have been done againſt ſome poſitive or penal Law.**

Secondly, **Actions for Slander, whether it be relating to his good Name and Reputation only, or to his Trade or Profeſſion, tending to deprive him of the Means of getting his Livelihood; to his Office or Dignity, or Title to Lands.** Vide Page 239.

Thirdly, **Of Actions upon the Caſe for not performing of Promiſes.** p. 286.

Fourthly, **Of Actions of Deceit upon Warranties,** &c.

Fifthly, **Of Trover and Converſion.** p. 345.

Sixthly, **Of Actions upon the Caſe for Wrongs by Nuſances and Annoyances.** p. 398. **By Diſturbances.** p. 404. **By Negligence.** p. 405.

Seventhly, **Of Actions againſt Officers for the undue Execution of their reſpective Offices.** p. 409.

Eighthly, **For Diſturbances of Officers in the due Execution of their Offices, or for doing ſomewhat whereby they are prevented from the due Execution of the Laws.** p. 413.

Ninthly, **Of Actions againſt Attornies, Apothecaries, Carriers, Innkeepers, Smiths, and all other People of what Art, Trade, Myſtery, or Profeſſion whatſoever; for the fraudulent, wilful, or negligent Exerciſe of their Profeſſion, Trade, Art or Myſtery, to the Injury and Damage of another.** p. 414.

Tenthly, **For Damages to be recovered by and againſt Executors and Adminiſtrators.** p. 441.

And Firſt, **For falſly and maliciouſly indicting or proſecuting the Plaintiff without a Cauſe, or impoſing ſome Crime upon a Man, ſuppoſed to have been done or committed againſt ſome poſitive or penal Law.**

1. The proper Action for an Impriſonment that is unlawful and cannot be warranted is an Action of Treſpaſs; but if a Man be impriſoned for a large Sum when there is but a ſmall one due, on Purpoſe maliciouſly to prevent the Party from procuring Bail, then an Action upon the Caſe may be brought againſt the Plaintiff in the Action who cauſed the Party to be ſo maliciouſly detained. *Robins* v. *Robins*. 1 *Salk*. 15.

2. The Injury for which this Action may be brought for charging a Perſon with Crimes done againſt ſome poſitive or penal Law, may be done by ſeveral, or by one Perſon only; if by ſeveral, and there are all the neceſſary Requiſites to make it a Conſpiracy, then the Party injured may have a Writ of Conſpiracy, or this Action, in the Nature of a Conſpiracy.

3. And as there is ſome Difference between an Action of Conſpiracy and an Action upon the Caſe, in Favour of the latter, That is moſt generally uſed, and moſt eligible where it may be had. For in an Action of Conſpiracy it is ſo far material, that there are more than one to participate of the Offence; that if the Writ be brought againſt ſeveral, and all but one are acquitted, there can be no Judgment againſt the other. *New Nat. Brev.* 114, 116. *Bro. Conſpiracy*, 21. *Bend.* 138. and if the Action be brought againſt two, the Acquittal of the one is the Acquittal of the other. *Cro. Eliz.* 701.

4. And it cannot be brought againſt the Husband and Wife, becauſe in the Eye of the Law, they are but one Perſon to this and ſeveral other Purpoſes. *Palmer* 25. *New Nat. Brev.* 265. 38 *E.* 3. 3. 40 *E.* 3. 19. *b.*

5. And in that Action, the Party who brings it muſt be indicted, arraigned and acquitted; and it is Part of the Writ it ſelf, that he was *legitimo modo acquietatus.* 9 *Co.* 56. *New. Nat. Brev.* 260.

6. And it is expreſly ſaid, in 9 *E.* 4. 12. that the Party muſt have been acquitted on a good Indictment, or elſe he ſhall not have that Action, and that it is a good Bar to ſay that the Indictment was inſufficient.

7. Therefore the Action upon the Caſe, (requiring none of theſe Qualifications, if there are others ſufficient to ground the Action) is generally choſen; and I ſhall confine my ſelf to the Caſes on this Head, and only take Notice, that this Action is a-like to the other in theſe two Inſtances, *viz.*

That the Proſecution, which is charged upon the Defendant to be the Ground of the Plaintiff's Action, muſt be,

First, *Voluntary.* Secondly, *Malicious.*

Firſt, As to its being Voluntary, it is to be obſerved that this Action hath been held not to lie againſt a Witneſs who comes into a Court, and gives Evidence againſt the Defendant, or by the Command of the Juſtices, or ſome of them, draws or procures to be drawn an Indictment againſt any one; or if being bound to proſecute, or to give Evidence, he does ſo, tho' his Evidence is falſe. 27 *Hen.* 6. 12. 35 *Hen.* 6. 14. 27 *Hen.* 8. 8.

But where it appears that a Witneſs is officious, and brings an Indictment ready drawn to the Court, that is an Evidence of its being Voluntary and Malicious. 1 *Leon.* 107. *Cro. Eliz.* 70, 134. *Knight* and *Jermin.*

Secondly, As to its being Malicious, it is here to be conſider'd what are the Marks whereby the Malice may be known and diſtinguiſh'd. Where a Party prevails upon a Juſtice not to hold a Man to Bail in a Matter on which he had brought the Plaintiff before him, and the Juſtice thereupon commits the Plaintiff to Priſon, for a Matter that was bailable, and good Bail was tender'd, this is a ſufficient Mark of Malice in the Proſecutor. *Muriel* ver. *Tracy*, 6 *Mod.* 169.

But where the Father Indicts a Man for a Rape upon his Daughter who is an Infant, and tells him the Party proſecuted was the Perſon, this ſhall be a ſufficient Excuſe to the Party proſecuting. *Cox* ver. *Worrall*, 2 *Cro.* 193. *Telv.* 103.

And if there is a real Felony committed, and there are Circumſtances happen to concur, which leave more room for a Suſpicion of the Perſon proſecuted, than of any other, that ſhall be a ſufficient Excuſe to the Party proſecuting, *Weale* ver. *Wells*, 3 *Bulſt.* 284. as where the Steers, which were ſtolen from the Defendant, were found in the Plaintiff's Poſſeſſion.

It has been ſaid, that the Accuſation muſt be falſe as well as malitious; but that does not hold in every Caſe, though it has been ſaid to hold where the Plaintiff was charged with Treaſon or Felony, or Crimes of the like Nature; yet in an Indictment for an Aſſault or Treſpaſs, where the Proſecution was plainly Malitious, it is not neceſſary that the Matter of the Proſecution was abſolutely Falſe.

But it may not be improper to take Notice, that a civil Action differs very far from an Indictment. For in that the Defendant has his Coſts, and at Common Law the Plaintiff was amerced *pro falſo clamore*, for the Eſtreats of which Amerciaments, Warrants were conſtantly delivered to the Coroners, who by a Jury affeer'd them according to the Malice or Vexation of the Plaintiff; alſo in civil Actions, the Plaintiff aſſerts a Right, or complains of an Injury, and therefore to bring an Action, tho' there be no good Ground, is not actionable, becauſe 'tis a Claim of Right, and the Plaintiff in ſuch Action has found Pledges, and is amerciable *pro falſo clamore*, and is liable to Coſts; but yet if one has a Cauſe of Action for a ſmall Sum, and takes out a *Latitat* for a very great Sum, or has no Cauſe of Action at all, and yet malitiouſly ſues the Plaintiff, to the Intent to impriſon him for want of Bail, or do him ſome ſpecial Prejudice, an Action of the Caſe lies; but then 'tis not enough to declare generally, that he brought an Action againſt him *ex malitia & ſine Cauſa, per quod* he put him to great Charge, *&c.* but he muſt ſhew the Grievance ſpecially as in 1 *Sid.* 424.

So whereas the Plaintiff owed the Defendant 100 *l.* he ſued him for 500 *l.* and to hinder him from Bail affirmed to the Sheriff 500 *l.* was due, *per quod* he was impriſoned for want of Bail, 1 *Saund.* 228. or for that the Defendant intending to procure his Impriſonment, where there was no Cauſe of Action, or without any Cauſe of Action ſued him in an Action for 300 *l.* whereupon he was arreſted impriſoned, *&c.* And yet if one that is not concerned, but a Stranger, procures another to ſue me without a Cauſe, I may maintain an Action againſt him generally. *Vide N. B.* 98. 2 *Inſt.* 544. 3 *Cro.* 378.

2. If a Man be falſly and malitiouſly indicted of any Crime, that may prejudice his Fame and Reputation, he may bring his Action, for he is falſly ſcandalized by the Malice of the Proſecutor; and this is a Damage for which the Law gives an Action. 1 *Sid.* 46. *Tel.* 15. *Lut.* 122.

So if a Man be falſly and malitiouſly indicted of a Crime, that ſubjects him to the Peril of Life or Liberty, and for which he may be puniſhed, he may bring his Action; for he is indangered in this Reſpect, and receives a Damage, for which the Law gives an Action. So if a Man be falſly and malitiouſly indicted, though it neither touch his Fame nor Liberty; for it is injurious to his Property in putting him to a needleſs Expence, and a Damage to one's Property will maintain an Action, as well as a Damage to his Fame or Perſon. *Vide* 3 *Edw.* 3. 19. 3 *Aſſ.* 1. 7 *H.* 4. 31. 11 *H.* 7. 25, 26. *N. Br.* 106. *Stile* 379.

3. Where a Man is falſly and malitiouſly indicted of a Crime which hurts his Fame, and which is a Scandal to him, though the Indictment be inſufficient, or an *Ignoramus* found, yet an Action lies for the Slander, becauſe the Miſchief of that is effected. So it is, if it indangered his Liberty, and he was actually impriſoned; otherwiſe where it only concerns his Property, for he cannot ſuffer that in either of thoſe Caſes.

But though the Action does lie, yet it is ſaid it ought not to be favoured; and therefore 1*ſt*, If the Indictment be found by the Grand Jury, the Defendant ſhall not be obliged to ſhew a probable Cauſe, but it ſhall lie on the Plaintiff's ſide to prove expreſs Rancour and Malice. 2*dly*, If *Ignoramus* be returned where an Indictment contains no Scandal, or the Party has not been impriſoned, no Action lies; otherwiſe if it contains a Scandal, or the Party has been impriſoned, but then there muſt be Evidence of expreſs Rancour and Malice; for Innocence is not ſufficient. 1 *Salk.* 15.

Note; It is ſaid in this very Caſe, reported in 5 *Mod.* 394. that it muſt be admitted, if the Indictment be not good, the Action will fail, becauſe the Party is not *Legitimo modo acquietatus*, and this upon the Authority of 2 *Inſt.* 385. but it was reſolved by my Lord Chief Juſtice *Parker*, as mention'd in the Margin of the Report in 1 *Salk.* 15. and by the whole Court, upon great Conſideration, that there was no Reaſon of this Diverſity between a malitious Proſecution upon a good Indictment, and upon a bad one; and that this Action will lie for Damages, for Expences, and Scandal or Impriſonment, though the Indictment be inſufficient. *Hill.* 12 *Annæ*, *Jones* againſt *Gwyn*, entred of *Trin.* 11. of the ſame Queen. *Roll.* 326. *Carthew* 416.

So that the Caſe of *Agard* and *Wild*, and others in *Bridgman* 132. ſeems not now to be Law where it was ſaid, that if an Indictment be inſufficient, although the Party pleads Not guilty, and is acquitted, yet he ſhall not have a Writ of Conſpiracy, or an Action upon the Caſe, in the Nature of a Conſpiracy; for by ſuch Indictment he cannot be in any Danger. 9 *Edw.* 4. 12.

The Several Caſes under this particular Head are diſtributed in this Order.

Firſt, *Where the Action has been held to be Good, and where not.*
Secondly, *Where and when the Action muſt be brought.*
Thirdly, *By and againſt whom.*
Fourthly, *Of the Declaration.*
Fifthly, *Of the Juſtification and other Pleadings.*
Sixthly, *Of the Judgment, Writ of Inquiry of Damages and the Execution.*

Firſt, Where the Action has been held to be Good, and where not.

1. Where the Father proſecuted the Plaintiff on Suſpicion of a Rape on his Daughter, was held not to be malitious, and gave no Cauſe of Action, what would have made the Action good, *ſee Cox* ver. *Worral*, 2 *Cro.* 193.

2. Where a Complaint to a Juſtice of Peace, and his binding to proſecute, and the Party acquitted was held to give no Cauſe of Action. *Mackinton* ver. *Allen*, *Winch* 73.

3. Where it was held, that if the Indictment is preferred by the Party agrieved, and he purſues it according to Law no Action lies, yet if Malice appears it will. *Knight* ver. *Jermin*, 1 *Cro.* 70, 134.

4. Where it was held that an Action would not lie againſt an Attorney for ſuing the Plaintiff in an Inferiour Court. *Anonymus*, 1 *Mod.* 209.

5. Where it was held that an Action would lie for arreſting a Man for 500 *l.* and holding him to Bail when there was but 200 *l.* due; the ſame Point in *Stribber* againſt *Johns* and *Waters*. 1 *Mod.* 4. 2 *Keb.* 546, 547. *Dowſe* ver. *Swain*. 1 *Lev.* 275.

6. Where it was held, that the Action would not lie for indicting for a Reſcue, though one of the Judges ſaid, that if the Declaration had been laid, that the Defendant knew it to be falſe, and it was done on Purpoſe to draw the Plaintiff into Trouble, it would have lain. *Raymond* 135. *Low* ver. *Bodmore*, 1 *Lev.* 169.

7. Where the Matter was not ſufficient to make it a Conſpiracy, the Defendant being only a Witneſs to find the Bill. *Willings* ver. *Fletcher*, 1 *Bulſt.* 185.

8. Where it is ſaid the Action would lie for maliciouſly indicting the Plaintiff, being a Juſtice of Peace, for delivering a Vagrant out of Cuſtody. 2 *Keb.* 486, 494. *Henley* v. *Burſtall*, *Raymond* 180.

9. Where it was held that this Action would lie for maliciouſly indicting the Plaintiff of a Treſpaſs. *Norris* v. *Palmer*, 2 *Mod.* 51.

10. Where it has been held, that cauſing a Man to be indicted for Treaſon was not actionable. 1 *Roll.* 209. *Lovet* v. *Fawkner*, *Cro. Jac.* 357.

11. Where the Contrary was held. *Radney* v. *Strode*, and others. 2 *Show.* 469.

12. Where the Defendant had proſecuted the Plaintiff in a wrong Court, and the Action held to lie. *Bradley* v. *Jones*, 1 *Brown.* 3.

13. An Action upon the Caſe lies for cauſing a Man to be arreſted for a Cauſe in an inferiour Court, which aroſe out of their Juriſdiction, but no Action will lie againſt the Officer, tho' the Court had no Juriſdiction of the Cauſe. *Hunſdon* v. *Cook*, *Skinner* 301.

14. Where it was held this Action would lie for a malicious Proſecution in a Court that had no Juriſdiction, and what was ſaid to be proper to be averr'd. *Smith* v. *Drinkwater*, 1 *Keb.* 627.

15. Where an Action was ſaid to lie for maliciouſly preſenting the Plaintiff before Perſons that had no Juriſdiction, by reaſon of the Expences and Vexation he was put to. *Atwood* v. *Monger*, *Stile* 378.

16. Where the Action was brought for a malicious Proſecution upon an Information, and held good. *Moor* v. *Shutter*, 2 *Show.* 295.

17. Where the Action was held to lie for Informing the Commiſſioners of the Cuſtoms, that the Plaintiff being an Officer took Bribes, whereby he loſt his Office. *Corbet* v. *Pearſon*, 1 *Lev.* 154.

18. In the Caſe of *Gray* v. *Dight*, reported in 2 *Show.* 144. and in *T. Jones* 132. by the Name of *Gray* v. *Degge*; and in *Ray.* 418. by the Name of *Gray* v. *Day*. It was held, that the Action did lie againſt the Defendant, for proſecuting the Plaintiff in the Spiritual Court, for refuſing to account as Church-warden. *V.* 1 *Jones* 312. 1 *Co.* 63. *Cro. Car.* 291. *Cro. Jac.* 351. *Cro. Eliz.* 838.

19. And in the Caſe of *Hocking* v. *Mathews*, the Action was brought for maliciouſly impleading, and cauſing the Plaintiff to be excommunicated in the Eccleſiaſtical Court, whereby he was taken upon an *excommunicato capiendo*, and impriſoned; and the Court gave Judgment for the Plaintiff. For tho' in an Action between Party and Party in the Eccleſiaſtical Court, where (if the Matter goes for the Defendant) he ſhall have his Coſts, no Action will lie if the Court had Juriſdiction; yet where there is a Citation *ex Officio*, and that is proſecuted maliciouſly without a Foundation, the Party ſhall have his Action; for in ſuch Suit he can have no Coſts according to the Reſolution of *Carlion* and *Mills*, 1 *Cro.* 291. and this ſhall be ſo intended after a Verdict. This Caſe of *Hockin* v. *Mathews* is reported in 1 *Ventris* 86. 1 *Sid.* 463. 1 *Lev.* 292.

20. But where the Party hath a proper Remedy in the Spiritual Court, tho' the Suit be without Cauſe, yet the Plaintiff ſhall not be puniſhed with an Action upon the Caſe. *Cro. Eliz.* 836. *Bray* v. *Patrid.* See *Hob.* 267. *Noy* 23, 39. 1 *Roll's Abr.* 102. *pl.* 2.

21. But if the Matter be merely Spiritual, yet if there ariſes out of it Matter Temporal an Action will lie; as where the Matter is for an Excommunication which is Spiritual, yet where the Plaintiff charges that the Defendant razed the Writ, and put out the Name *Harris*, and put in the Plaintiff's, the Action would well lie. *Cro. Eliz.* 838. *Kenton* v. *Wallinger*. For other Caſes as to this Point, ſee *W. Jones* 304. 3 *Cro.* 285. *Kercheval* v. *Smith*, *Danv. Abr.* 78, 79, 80.

22. Where upon a Complaint to a Juſtice, who bound the Plaintiff over to appear, and the Bill of Indictment was found *Ignoramus*, yet it was held that the Action would lie. 2 *Roll* 188. *Palmer* 45. *Stiles* 10. *Degget* v. *Lawrey*, 2 *Cro.* 190.

23. Where the Action would lie, tho' no Bill of Indictment found. *Wright* v. *Black*, *Winch* 28, 54.

24. Where the Action would lie for procuring the Plaintiff to be outlaw'd, and what a proper County to bring the Action in. *Bulwer* v. *Smith*, 4 *Leon.* 52.

25. Where there was a Diſpute, whether the Action lay for the procuring an Appeal for Murder. *Archebold* v. *Borrell*, 3 *Leon.* 193.

26. Where the Action was held to lie againſt the Under-Steward of an Inferiour Court who proceeded to Judgment, and Execution after a *Habeas Corpus cum Cauſa* deliver'd to him. *Iplett* v. *Williams*, 3 *Leon.* 99.

27. Where an Action of Conſpiracy was held to lie for the delaying the Plaintiff of his Suit, and not taking Bail in a Bailable Action. *Cockſal* v. the Mayor of *Boalton*, 1 *Leon.* 189.

28. Where it is ſaid an Action will lie for a malicious Attachment for Goods, and although he ſaid the Plaintiff did not alledge the Defendant knew the Goods to be the Plaintiff's. *Saunders* v. *Powell*, 1 *Lev.* 129.

29. That the Entry of a *Noli Proſequi* upon an Indictment was not ſufficient to conſtrue the Plaintiff to be *Legitimo modo acquietatus* to maintain the Action. *Goddard* v. *Smith*, 1 *Salk.* 21.

30. Where the Defendant had ſued out a *Fieri Facias*, and the Sheriff had returned the Writ, that the Goods levied remained in his Hands for want of Buyers, and the Defendant well knowing this, ſued out another, upon which the Money was levied; and held that the Action would well lie; for *Hob.* who delivered the Judgment of the Court ſaid, if a Man ſued me in a proper Court without Ground of Truth, and that certainly known to himſelf, I may have an Action on the Caſe againſt him, for the undue Vexation and Damage, though the Suit itſelf be legal, and I cannot complain of it as a Suit. So if a Man charge me with a Crime, in a Court that is in no wiſe cognizable of the Cauſe, I may have an Action for it, and lay that very Complaint to be the Slander. *Vide* the Caſe of *Buckley* and *Wood*, in 4 *Cooke* 14. *Water* v. *Freeman*, *Hob.* 205, 206, 207.

31. Where the Action was held to lie for cauſing the Defendant to be had before a Juſtice, and there charging him with a Matter that ſounded in Felony. *Neve* v. *Croſs*, *Stile* 350.

Secondly, Where and when the Action muſt be brought.

1. Where the *Venue* in this Action ſhall ariſe from whence the Cauſe of Action ariſes upon an Indictment of Felony. *Hercote* v. *Handerin* and others. 2 *Bulſt.* 331.

2. Where it was held that this Action would not lie in an Inferiour Court for a malicious Proſecution, for an Indictment and Acquittal in the Court of King's Bench. *The King* v. *Roberts*, *Mod. Caſes in Law and Equity*, 307, 308.

3. Where the Court held this Action Tranſitory. 2 *Skow.* 197. Lord *Shaftsbury* v. *Graham*, *Skinner* 43.

Thirdly, By and againſt whom.

1. Where the Action was brought by Husband and Wife, and there was no Judgment,, for that *Berkley* was of Opinion that the Wife could not join; but *Cro.* was of Opinion to the Contrary. *Vide W. Jones* 440. *Dalby* v. *Dorall & Ux.* 3 *Cro.* 553.

2. Where an Action upon the Caſe in the Nature of a Conſpiracy was brought againſt three, and one only found Guilty, and held good, becauſe it is but in it's Nature an Action upon the Caſe, and the Conſpiracy only Aggravation. *Pollard* v. *Evans*, 2 *Show.* 50. *S. P.* adjudged *Raymond* 176. *Skinner* v. *Gunter*, 1 *Vent.* 12, 19.

Fourthly, Of the Declaration.

1. Where the Record of the Indictment was not held to be variant from that ſet forth in the Declaration, though the firſt ſets forth, that it was before Juſtices of the Peace only, and the latter went further, *Nec non ad diverſas felonias, &c. Audiend' & Terminand' aſſignat'. Telv.* 46. *Barnes* ver. *Conſtantine*, 2 *Cro.* 32.

2. Where the Plaintiff ſet forth that he was indicted for Felony, and had not ſaid he was lawfully acquitted thereof, or of the ſaid Felony, but only lawfully acquitted. *Noy* 116. *Bell* ver. *Fox* and *Gamball*, *Telv.* 161. *S. P.* 3 *Cro.* 286, 315, 419. *Marham* ver. *Peſcod*, 2 *Cro.* 130.

3. Where the Declaration was inſufficient, becauſe the Juſtices that ſet there to acquit the Plaintiff had no ſuch Power, and where Malice ſhall be intended, and where it muſt be proved. *Throgmorton's* Caſe, 1 *Cro.* 564.

4. Where the Declaration was ill, in charging the Defendant with Conſpiracy, to indict him of Perjury for ſwearing as a Witneſs, but ſhows not before whom the Oath was taken. *Sherrington* ver. *Ward*, 1 *Cro.* 724.

5. Where the Declaration charging the Defendant with a *ſimul cum* was held good, tho' the other not ſued. *Mills* ver. *Mills*, 3 *Cro.* 239.

6. Where the Conſpiracy laid in the Declaration was not well ſet forth to be purſued and executed, and where one Partner may bring the Action, and where not, without the other. *Gore* and others ver. *Dawbney*, 2 *Leon.* 75.

7. Where the Plaintiff ſet forth that he was indicted, and does not in his Declaration ſay what was done thereupon, yet the Action held to lie. *Arundell* ver. *Triggono*, *Telv.* 116.

8. Where it was held not to lie to accuſe a Man of Treaſon, and where it is ſaid, that *Legitimo modo acquietatus* is neceſſary to an Action of Conſpiracy, but not to an Action upon the Caſe in the Nature of a Conſpiracy. 2 *Roll* 259. *Palm.* 315. *Latch* 79. *W. Jones* 93. 2 *Bulſt.* 271. *Smith* ver. *Crawſhaw*, *Benl.* 152. 3 *Cro.* 15. the ſame Caſe.

9. Where it was omitted in the Declaration, that he *falſo* impoſed the Crime of Felony on the Plaintiff, and *ex malitia*, held ſufficient. *Manning & Ux.* ver. *Fitzherbert*, 3 *Cro.* 271.

10. Where the Declaration was held good, tho' the Indictment was laid by way of Recital, and tho' he did not ſay he was in Gaol, whereby to have ſhewn, that the Juſtices of the Gaol-Delivery had Power to acquit him. *Bagnall* ver. *Knigh*, 3 *Cro.* 553.

11. Whether the Plaintiff may join ſeveral Conſpiracies in one and the ſame Declaration. *Stroud* ver. *Roper*, 1 *Bulſt.* 15.

12. Where the Plaintiff alledged, that the Defendant malitiouſly cauſed him to be indicted, & *quod Juratores dixerunt quod ignorabant*, and it was held to be as good as if it had been ſaid, that the Jury return'd *Ignoramus*. *Pauling* ver. *Shaw*, *T. Jones* 20.

13. Where this Action was held good, though the Declaration ſet forth that the Indictment was for Felony, as Acceſſary for ſuffering a Priſoner to eſcape that was convicted of Felony, though the Matter charged was not Felony, but a Scandal lay upon the Plaintiff for it; and therefore the Defendant was to be puniſhed by this Action. *Gardiner* ver. *Jolly*, *Stile* 157.

14. The Declaration ſets forth, the Defendant cauſed the Plaintiff to be indicted, and that upon preferring the Bill to the Grand Jury, they found an *Ignoramus*, and ſo moved in Arreſt of Judgment that it was a Repugnancy. *Roll Chief Juſtice* inclined to an Opinion, that it was not material whether the Indictment was good or no; and that it ſhall be conſtrued according to a common Intendment that he was indicted, though the Indictment was not found; but *Hales* moved to amend his Declaration; ſo they went to a new Trial. *Anonymus*, *Stile* 372.

15. Where the Word *falſly* was omitted in the Declaration; but Roll Chief Juſtice ſaid, that as it was alledged to be *malitioſe*, the Word *falſly* was implied. *Kitchinman's* Caſe, *Stile* 374.

16. Where it was held that the Place ought to be ſhown in the Declaration, where the Defendant procured the Plaintiff to be indicted. *Pencawin* ver. *Trappin*, *Latch* 262.

17. Where a Declaration in this Action was held naught, for ſaying the Defendant malitiouſly proſecuted him without a *juſt Cauſe*, whereas it ſhould have been without any Cauſe, or *without any juſt or probable Cauſe*. *Box* ver. *Taylor*, 2 *Show.* 154.

18. Where this Action was brought againſt *Tracy* and others, in the Nature of a Conſpiracy, charging them that they, *prætextu cujuſdam warranti*, cauſed the Plaintiff to be arreſted and carried before one *Chamberlaine* a Juſtice of Peace, who by the Perſwaſion of *Tracy*, refuſed to bail him, tho' good Bail was tender'd, and *Chamberlaine* committed him to Priſon, where Money was extorted from him; but in no Part of the Declaration was it ſaid to be without *a probable Cauſe*; and *Holt* Chief Juſtice held the Declaration to be ill for that Reaſon. *Muriel* ver. *Tracy & al'*, 6 *Mod.* 169.

Fifthly, Of the Juſtification and other Pleadings.

1. How far a Man may encourage the Proſecution of an Indictment, and accompany another therein, and juſtifie it. *Stone* ver. *Bates*, 1 *Brownlow* 9.

2. Where a Juſtification to an Action of Conſpiracy was held good, in as much as the Defendant confeſſed the Procurement of the Indictment, and avoided the Action by Matter of Law. *Payne* ver. *Rocheſter* and *Whitfield*, 1 *Cro.* 871.

3. Where a Juſtification for Indicting for Felony was held good, and the doing of it malitiouſly, held not to be traverſable. *Chambers* ver. *Taylor*, 1 *Cro.* 900, 901.

4. Where a Juſtification was held ill, not ſhewing a ſufficient Cauſe to charge the Defendant with Felony. *Smith* ver. *Hodgskins*, 3 *Cro.* 276.

5. Where a Juſtification to this Action was held not good. *Wale* ver. *Hill*, 1 *Bulſt.* 149.

6. Where the Defendant had Juſtified for cauſing the Plaintiff to be indicted of Felony for ſtealing of Steers, and the Defendant juſtified that he was poſſeſſed of five Steers which were ſtolen from him, that he made freſh Suit after them, that they were found in the Poſſeſſion of the Plaintiff, that the Defendant came to him, and demanded to have the Sight of them, which he refuſed to do, and gave him very uncertain Anſwers, by Reaſon whereof he did ſuſpect him, and ſo procured a Warrant, and had him before Sir *Thomas Bennett*; who by Reaſon of his uncertain Anſwers upon his Examination did alſo ſuſpect him, and committed him, binding him over to appear at the next Seſſions to anſwer this Matter; and did alſo then bind this Defendant to proſecute againſt him, at which Time he did accordingly proſecute an Indictment againſt him, and then gave this Matter in Evidence to the Jury againſt him, who did acquit him, and ſo juſtifies his Proceedings. *Weal* ver. *Wells*, 3 *Bulſt.* 284.

7. The Plaintiff replied, and ſhews he was a Butcher, and bought theſe Steers in *Market-Overt*, and had tolled for them, and that he had killed three of them, and takes a *Traverſe*, *abſque hoc*, that he refuſed to ſhew them to him; upon a Demurrer the Court was inclin'd to be of Opinion it was a good *Traverſe*, and the Caſe was retained, but the Parties agreed.

Sixthly, **Of the Judgment, Writ of Enquiry, Damages, and Execution.**

1. Where an Action for Words, and procuring him to be indicted, and ten Shillings Damages, was held to be out of the Statute of 21 *Jac. cap.* 16. of Limitations. *Bilſard* ver. *Barnes*, *S. P.* 307. Adjudged *Topſal* ver. *Edwards*, 3 *Cro.* 163.

2. Where a Judgment in an Action for Words, and a malitious Indictment, was revers'd as to the Words, and ſtood good as to the other. *Jacob* ver. *Mills*, 1 *Roll* 24.

3. Where it is ſaid, a Man may have an Action upon the Caſe in the Nature of a Conſpiracy, tho' he be not acquitted; but a Writ of Conſpiracy he can't, unleſs he be indicted and acquitted; and where the Bill was on an Action upon the Caſe, and the Declaration, and the whole Record in the Nature of a Conſpiracy, yet the Plaintiff had Judgment as in Caſe, tho' they require different Judgments. *Cranbank*'s Caſe, 2 *Roll* 49.

4. It is ſaid the Jury might, in an Inferiour Court, inquire in Aggravation of Damages of Matters out of their Juriſdiction. *Corbets* ver. *Pearſon*, 1 *Lev.* 154.

5. An Action was brought for malitiouſly indicting the Plaintiff for High Treaſon, and Judgment for the Plaintiff, and the Jury found ſeveral Damages, as to one of the Defendants 50 *l.* and as to the other Defendants 1000 *l.* the Counſel for the Defendant would have it, the Jury could not thus ſever the Damages, becauſe it was laid to be a Joint Treſpaſs; and Sir *John Holt* inſiſted, that there is no Caſe where a *Non proſs* can be entred where the Pleas are Joint, and therefore that would not help it, but that it was a Diſcharge as to both upon the Reaſon of the Caſe, in *Hob.* 70. *Parker* ver. Sir *John Lawrence* and others; where it was held, that a *Non proſs* as to one, releaſes as to all before Judgment; ſo in Sir *John Haydon*'s Caſe, 11 *Rep.* 5. where it is ſaid, the Jury cannot ſever the Damages in ſuch Caſe. *Radny* ver. *Strode*, *& al'* 2 *Show.* 469.

6. Upon an Acquittal on an Indictment for a Riot, and an Action brought upon that Acquittal, the Plaintiff muſt prove the Proſecution to be Malitious. *Carthew* 416.

Concerning Actions for Slander.

In Treating of this Action for Slander I ſhall conſider,

First, **The Words.**
Secondly, **The Manner of Declaring.**
Thirdly, **The Plea.**
Fourthly, **The Trial and Damages.**
Fifthly, **The Judgment and Execution.**

First, Of the Words.

In Words of Slander, theſe Things are requiſite.

First, *That the Words are either Expreſs and Affirmative, or at leaſt that they ſo far ſtrongly imply an Affirmation, that the Hearers may intend that the Perſon is actually charged to have done the Fact, or ſubject to the Slander.*

1. Where one ſays of another, *bear Witneſs, Miſtreſs, he hath ſtolen my Hair Cloth*, no Action lies; for this is not a direct Affirmative to charge him with the Stealing thereof, but altogether depends upon the Teſtimony of another. *Telv.* 126. *Bury* ver. *Wright.*

2. Where the Plaintiff declares, that whereas he had been indicted and arraigned for robbing the Defendant, and was acquitted, and the Defendant ſaid of him; *If* A. *and* B. *had done Juſtice, he had been hang'd for robbing me*, held the Action lies; for it is *quaſi an Affirmative. Cro. Eliz.* 786. *Royal* ver. *Peckham.*

3. If one ſays to another, *I know my ſelf, and I know you, I never bugger'd a Mare*, an Action will lie; or otherwiſe by ſuch ſly ways of Expreſſion any Man might be ſlander'd. 1 *Vent.* 276. *Anonymous.*

4. So if one ſays, *I heard a Bird ſing, or I dreamt* J. S. *ſtole a Horſe*, an Action lies. 1 *Lev.* 277. 1 *Vent.* 60. 1 *Syd.* 434. 2 *Lev.* 150.

5. If one Man ſays to another, *you* B. *you will lie with a Cow again; if you had your Deſerts you deſerve to be hang'd*; adjudged actionable. *Potwrite* ver. *Barrell*, 1 *Sid.* 220.

6. If *A.* ſays of *B. thou art a baſe Rogue, and a dogged Rogue, and I will make thee an Example and Precedent for a perjured Rogue*, an Action lies for theſe Words, for they are affirmative with an Aſſeveration. 1 *Roll Abr.* 49. *Pl.* 4.

7. So if *A.* ſays of *B.* and *C. we will have them ſtand in the Pillory, and have their Ears for Perjury and Subornation of Perjury*, it has been adjudged actionable. 1 *Roll's Abr. fol.* 49. *Letter P. Pl.* 11.

8. So if one Man ſays of another, *he ſays I am perjured, but he is a perjured Knave as well as I, for he and* T. *ſwore one for another*, an Action will lie, tho' he charges him only by way of Relation. *Orton* ver. *Fuller*, *Raymond* 51.

9. But if a Man ſays of another, *he broke my Houſe like a Thief*, no Action will lie becauſe it is not a direct Affirmation, only an Alluſion. 2 *Vent.* 172. *Anonymous.*

10. And it hath been adjudg'd, that not only Words that are poſitive, and in the Preſent-Tenſe, are actionable, but likewiſe Words that are in the Preter-Tenſe are likewiſe actionable; as for a Man to ſay of another, *I am no Traitor, I have ſeen you in the Rebellion*; an Action lies for theſe Words, tho' they are ſpoken of a Time paſt, and tho' perhaps there may have been a General Pardon ſince he was in Rebellion; yet the Court will not intend it; but if there was, the Defendant ought to ſhew it in pleading. *Dalton* ver. *Sudde*, 1 *Lev.* 251.

11. But this is only where the Action affects the Mind, whereby *Culpa erit in perennis*, for where they are ſpoken concerning a *Diſeaſe*, that he ſuppoſes, by the Words ſpoken, the Plaintiff has laboured under, whereby he loſt the Familiarity of ſober People, or where they concern a Man's Circumſtances, there Words of a Man in the Preter-Tenſe are not actionable, becauſe a Man may have been cured of ſuch a Diſeaſe, and might become a Man of good Circumſtances. *Noy* 151. *Cro. Car.* 199. 1 *Roll's Abr.* 67. *Pl.* 24.

12. As to ſay of a Man, *that he hath broke twice*, theſe Words are not actionable, becauſe he may now be a ſufficient Man. *Latch* 114. *Noy* 77.

13. Yet in 1 *Jones* 321. it is there held, where a Man ſaid of another, *thou cameſt a broken Merchant from* Hamburgh, after a Verdict and ſpecial Damages proved; ſo theſe Words have been held actionable.

14. *I will prove he hath been a Bankrupt, and hath agreed with his Creditors for a Noble in the Pound*, it hath been adjudg'd, that theſe Words were actionable. *Hill.* 3. *Jac. B. R. Edmunds* ver. *Whetſtone*, *New Dy.* 72. *b.* in the Margin.

15. But if a Man ſays of another, *thou art a baſe Fellow, and haſt had the French Pox*; no Action will lie for theſe Words, becauſe he may have been cured. *Noy* 151. *Paſch.* 6 *Ja. Allen* & *Smith. Allen* 30.

16. And not only Words ſpoken to, or of a Man *affirmatively*, but Words by way of *Interrogation* have been adjudged actionable, and very

juſtly; for otherwiſe it would be in the Power of any Man to do another an Injury by the moſt malitious Words that can poſſibly be ſpoken by putting them into an *interrogating Phraſe*; whereas the Hearers have as clear an Idea of their having been ſpoken in Defamation of him for whom they were intended, as if they had been ſpoken to a Man, charging him expreſly with the Facts meant thereby.

17. As if a Man ſays to another, *when wilt thou bring Home the Nine ſtolen Sheep which thou ſtoleſt from* J. S. an Action will lie for theſe Words, 37 & 38 *El. Hunt* ver. *Thimblethorpe*, 1 *Rolls Abr.* 48. *Letter K. pl.* In like Manner for theſe Words, *have you brought Home the* 40 l. *you ſtole*, held actionable. *May* ver *Gibbons*, *Cro. Jac.* 568.

18. What other interrogating Words have been actionable, are in the following Caſes.

Cro. Jac. 422. *Nelſon* ver. *Staffe.*
March 58.
Cro. Eliz. 273. *Jordan* ver. *Liſter.*
Cro. Eliz. 26. *Griffith* ver *Morriſon.*
Moor 418. *pl.* 573. *Thimplethorpe's* Caſe.
Palmer 66. *Gibbons* ver. *Maggott.*
2 *Rolls Rep.* 165. the ſame Caſe.

19. So conditional Words have been held to be actionable, as if a Man ſays, *If* J. S. *might have his Will he would kill the King*, an Action upon the Caſe lies. *Sydenham* and *Man*, *Cro. Jac.* 407. 1 *Roll Rep.* 427. 3 *Bulſt.* 260. *Hob.* 180. 1 *Roll.* 49. *Letter O. pl.* 1.

20. But Words in the Diſjunctive have been held not actionable; as if *A.* ſays of *B.* to *C.* his Brother, *Sirrah thy Brother* B. *was whipt about* Taunton *Caſtle for ſtealing of Sheep, or elſe was burnt in the Hand or Sloulder*, whereas he in Truth never committed any ſuch Felony; theſe Words are not actionable, becauſe a Man could not have been burnt in the Shoulder for ſtealing Sheep, ſo it makes the Words uncertain. *Cro. Car.* 283.

21. *Thou haſt ſtolen my Mare, or conſenting to the Stealing of her*, has been held actionable. *Cro. Eliz.* 780. *Griffith's* Caſe, *Noy* 172.

22. Negative Words have been held not to be actionable, as to ſay, *I never came home and pox'd my Wife.* *Clerk* ver. *Dyer*, *Trin.* 10 *Geo. Mod. Caſes in Law and Equity.* 290.

Secondly, *The Matter charged muſt be ſuch as, if true, is againſt ſome* poſitive Law, *and the Party may be* puniſhed *for it; or elſe the Perſon of whom they are ſpoken, muſt have received ſome* ſpecial Prejudice *by the Words which he muſt aver.*

1. 'Tis to be obſerved, that Words meerly *Spiritual* without any *temporal Loſs*; as calling a Man *Whore-maſter*, or a Woman *Whore*, are not actionable. 1 *Roll's Abr. fol.* 35. *pl. Letter D. pl.* 1. *Matthew* v. *Croze.*

2. But for Words of *Spiritual* Cognizance only with a *temporal Loſs*, an Action will lie; as where a Man ſaid of a Woman, *that* J. S. *had the Uſe of her Body*, by which ſhe loſes her Marriage, are actionable. 1 *Roll's Abr. fol.* 35. *L. D. pl.* 5. *Morriſon* v. *Cade.*

3. And there is no Difference where the Words are ſpoken of a Man or Woman, if he loſes his Marriage; where the Words were, *Thou art a Whore-maſter, for thou haſt lain with Brown's Wife, and hadſt to do with her againſt a Cheſt.* 1 *Roll's Abr. fol.* 35. *pl.* 5. *Lat.* 218. 2 *Roll's Rep.* 273. *Palm.* 85. *Cro. Ja.* 323. 2 *Bulſtr.* 89, 90. 3 *Bulſtr.* 48.

4. So where the Defendant ſaid, that the Plaintiff *had the Uſe of his Wife's Body by Force*, and by Reaſon thereof, the Plaintiff was carried before Juſtices, and examined for a *Rape*, and laid out ſeveral Sums of Money to get clear from that Imputation; theſe Words are actionable in

Regard of the *temporal Loſs*. 1 *Roll's Abr.* 35. *L. D. pl.* 9. *Harris* v. *Smith*, *Litt.* 337.

5. But where the Words are ſpoken in *London*, of a Woman calling her *Whore*, they are actionable without alledging any *temporal Loſs*; becauſe by the Cuſtom of that Place, ſhe is liable to a *temporal Loſs*, that, is to be carted. 1 *Roll's Abr.* 36. *L. D. pl.* 13. *Haſſell* v. *Capcot*; 'tis ſaid in 1 *Syd.* 97. in the Caſe of *Roberts* v. *Herbert*, that there is the ſame Cuſtom in *Southwark*.

6. To pronounce a Man *Excommunicated*, without having any proper Authority for ſo doing, is actionable. 1 *Roll's Abr.* 37. *Barnabas* v. *Trauntor*, *pl.* 15. but to ſay *a Man is Excommunicated* is not actionable. *Skinner* 124.

7. If one calls a Woman *Copyholder*, while ſhe is Sole, *a Whore*, 'tis actionable, by reaſon of the ſpecial Damage which may accrue to her. 1 *Syd.* 214. *Boys* v. *Boys*, 4 *Co.* 17.

8. So to ſay of another that has Lands by Diſcent, that *he is a Baſtard*, an Action lies, becauſe theſe Words tend to his Diſinheritance, and Diſturbance by Suit. 1 *Roll's Abr.* 37. *pl.* 16. *Co. Entr.* 28. *pl.* 25.

9. But if a Man *be Son and Heir Apparent only*, and ſuch Words are ſaid of him, no Action lies. 1 *Roll's Abr. fol.* 37. *pl.* 18.

10. Yet where the Plaintiff declared, that he was Heir Apparent to his Father, and *B.* his Brother, and that they had Lands, *&c.* and intended to have ſuffered theſe Lands to have deſcended to him, and by Reaſon of ſpeaking theſe Words intended to diſinherit him, it was held the Action did lie. 1 *Roll's Abr. fol.* 38. *pl.* 21. *Humfrys* v. *Slutfield*, *Cro. Car.* 436. *Godb.* 327. 2 *Roll's Rep.* 249, 250. 1 *Roll's Rep.* 244. 3 *Bulſt.* 75. *Cro. Eliz.* 346. *Dal.* 63. *Godb.* 328.

11. Words ſubjecting a Man to Puniſhment may not be actionable unleſs ſcandalous; as where before the late Statute of the 5th of King *G. cap.* 15 .*Sect.*—for killing Deer, the Words were, *Thou art one of thoſe that ſtole my Lord* Shaftsbury's *Dear*, was held not actionable; for tho' Impriſonment, which was then the Puniſhment will follow, yet 'tis ſaid by *Holt* not to be a ſcandalous Puniſhment. *Salk.* 696. *Turner* v. *Ogden.*

11. The calling a Woman an *Hermaphrodite* was adjudged actionable, with ſpecial Damages averr'd, ſetting forth ſhe was a School-miſtreſs, and loſt a great many Scholars. 2 *Show.* 18. *Caſe* 11. *Whetherhead* v. *Brook.*

12. But where Words are not actionable in themſelves, and the ſpecial Damage averr'd to have been received, could not by any Conſtruction be received, there tho' the ſpecial Damage is averr'd, yet the Words are not actionable with ſuch an Averment; as where a Man ſpoke theſe Words of a Butcher, on a *Colloquium* of a Cow, and the Fleſh, *That the Cow died with Calving*; per quod *he loſt Cuſtomers*, after a Verdict the Judgment was arreſted; otherwiſe would it have been if the Plaintiff had averr'd that he could not ſell the Reſt of his Cow. *Salk.* 693. *Taſſan* v. *Rogers.*

Of Words charging a Perſon with a Diſeaſe.

1. In charging a Man or Woman with having the *French Pox*, it is neceſſary that the Words carry a plain Indication, that the Defendant meant the *French Pox*, otherwiſe no Action lies for ſpeaking them; as for Example, no Action lies for the ſeveral Words following, to ſay *Thou art a pockey Whore, go to* John Hawkins *the Leach for the Pox. Mich.* 17 *Ja. B. R.* between and *Farin*, 1 *Roll's Abr.* 67. *L. T. pl.* 23. and it was ſo held in *Cro. Jac.* 499. in the Caſe of *Hunt* and *Jones.*

2. So the Words *Thou art a thieving Whore, a pocky Whore, and I will prove you a pocky Whore*, were adjudged not actionable in the Caſe of *Culliford* and *Knight*, in *Cro. Jac.* 514. becauſe it is ſaid there, that the laſt Words cannot make an Indictment of the *French Pox*; yet Q. if this

laſt Caſe be Law; for in 1 *Syd.* 373. it was held, that to call a Man thieving Rogue was actionable, becauſe it implies an Act done; if ſo, why ſhould not theſe Words be actionable.

3. And obſerve in 1 *Siderfin* 50. in the Caſe of *Marſhal* and *Chickall*, theſe Words were adjudged actionable, *your Daughter is a Whore, and a pocky arſ'd whore*, becauſe the Words, you have had the Pox, are coupled with the Word Whore, it is a plain Indication that the Defendant meant the *French Pox*.

4. To ſay *a Man has got the Pox, and that he got it by a yellow hair'd Wench in* Moor-Fields, tho' the latter Words do not carry a violent Intendment, that the Speaker meant the *French Pox*, yet becauſe the Senſe leads more that way than any other, there the Words have been adjudged actionable. 6 *Mod.* 24. 1 *Lev.* 280. 1 *Sid.* 432. 1 *Vent.* 50. 1 *Cro.* 509, 510.

5. The Words *thou art infected of the Pox, and thy Wife was laid of them*, an Action upon the Caſe lies, *Cro. Eliz.* 28. for it plainly appears that he meant the *French Pox*; and great Streſs was laid upon Words that amount to the Meaning of being laid of the Pox, or eaten with the Pox. *Cro. Eliz.* 878. *Cro. Eliz.* 214. 2 *Brownlow* 276.

6. So to ſay *Thou art a Rogue, and a pocky Rogue, and the Pox haunts you twice a Year*, theſe Words have been adjudged actionable Words. 1 *Roll Abr.*

Of Words that are actionable, if ſpoken of a Man to ſcandalize him in his Office.

1. If one ſays of a Juſtice of Peace, *he hideth and covereth Felonies*, 4 *Co.* 19. or that *he is a Smotherer and Maintainer of Felonies*. *Cro. Jac.* 268.

2. So that *he is a Basket Juſtice, a Partial Juſtice, I will give him* 5 l. *every Year for his Gifts for Juſtice Matters*, an Action will lie for theſe Words. Partial Juſtice touch him in his Office, and charge him with Corruption therein. *Mich.* 4 *Jac. Kemp & Houſegoe, Cro. Jac.* 90.

3. So of a Town Clerk of *D.* and Steward of the Court, that the Defendant ſaid of him, *he had taken* 40 s. *treble*, is actionable, for it muſt neceſſarily be intended to be ſpoken of him in the due Execution of his Office. *Mich.* 6 *Ja. Nole* and *Swanſer*, *Telv.* 1, 2. *Godb.* 157.

4. So if one ſays of a Juſtice of Peace, that *he is an Half-ear'd Juſtice, and can hear of but one Side*. *Trin.* 7 *Car.* Sir *William Marſham* and *Bridges*, *Cro. Car.* 223.

5. So of a Lord Chief Baron, that *he can hear but of one Ear*, if ſpoken on a Diſcourſe at his Adminiſtration of Juſtice. *Heth.* 161.

6. But if one ſays of a Juſtice, he is not worth a Groat, and is gone to the Dogs, no Action lies for theſe Words, notwithſtanding the Statute of *H.* 6. requires, that a Juſtice of Peace ſhould have 40 *l. per An.* 1 *Ventris* 258.

7. It has been held, that if *A.* ſays to *B. you would be a Juſtice of Peace like Major* F. *a Fool, an Aſs, a Coxcomb, a Buffle-headed Juſtice*, F. can have no Action; and adjudged by three Judges againſt one, that to ſay of a Juſtice of Peace, *he is a Fool, Aſs, and a Beetle-headed Juſtice*, are Words not actionable. 1 *Lev.* 52. 1 *Danv.* 121. and in the 4th *Rep.* 13. to call him Rogue or Varlet was not actionable; but in the Caſe of *Aſhton* and *Blagrave*, *Trin.* 10 *G.* 1. to call a Juſtice of Peace a Raſcal, Villain, and a Liar, with a *Colloquium* of his being a Juſtice of Peace, were held to be Words actionable.

8. Words for which an Action may be brought that relate to a Man's Office, by charging him with a Crime in the Execution of it, muſt carry in themſelves a plain and direct Meaning to charge him with a Crime that is puniſhable, of their being ſpoken of his Office, or otherwiſe no Action will lie; as in the following Words ſpoken of a Chancellor of the

Conſiſtory Court; *There goes your rare Chancellor, innuendo* the Plaintiff, *to ſuborn Witneſſes to ſwear againſt a Parſon*; theſe Words were held not to be actionable. Firſt to ſuborn Perſons to ſwear is not a Crime puniſhable; ſo barely to ſay that another ſuborn'd a Perſon to forſwear himſelf, without any thing more, is not actionable, without there was ſuch a Communication that plainly demonſtrates that Forſwearing to be in a Cauſe, or before a Magiſtrate in ſome Matter, that his Forſwearing himſelf was Perjury; and to name him Chancellor, is only *deſignatio Perſonæ*, and does not of it ſelf make it ſufficiently Evident, that ſuch Words were ſpoken of him in Execution of his Office. *Walmſley* and *Ruſſell*, *Trin.* 3 *Annæ B. R.* 6 *Mod.* 200, 201, 202, 203, 204.

9. In Offices of Profit, Words that impute either Defect of Underſtanding, Ability or Integrity, are actionable; but in thoſe of Credit, Words that import Want only of Ability are not actionable; as to ſay of a Juſtice of Peace, that *he is an Aſs, and a Beetle-headed Juſtice* is not actionable, becauſe a Man cannot help his Want of Ability, as he may his Want of Honeſty; otherwiſe where Words impute Diſhoneſty or Corruption, as in Caſe where the Office is an Office of Credit, and the Party charg'd with Inclinations and Principles which ſhew him unfit, and that he ought to be removed, which is a Diſgrace. *Salk.* 695.

Of ſcandalous Words ſpoken of a Man tending to injure him in his Trade or Profeſſion.

1. Scandalous Words that tend to injure a Man in his Trade or Profeſſion, are (as I conceive) of all others as injurious, or rather more ſo, than thoſe which tend to deprive him of his Life or Liberty, or that ſubject him to a Fine or corporal Puniſhment, or to deprive him of the Communication and Familiarity of Mankind; becauſe, as to Words which tend to deprive him of Life or Liberty, or which charge him with a Crime which would ſubject him to corporal or pecuniary Puniſhment, he muſt firſt be convicted by Form of Law before he can loſe his Life, or receive ſuch Puniſhment.

2. And in the Caſe of Words ſpoken of a Man which tend to deprive him of the Familiarity and Converſation of Mankind, they cannot be ſo injurious; becauſe, if a Man is a ſkilful Workman, or an honeſt Dealer, a fair Practitioner, or an ingenious Man in his Profeſſion, he will be ſolicited by ſome Part of Mankind, that perhaps at another Time would not have a Familiarity or Converſation with him.

3. But Words ſpoken of a Man as to his Trade or Buſineſs, which tend to deprive him of the Means of getting his livelihood, may render Life, Liberty, and the Converſation of Mankind of little Service, when he cannot get his Bread; and beſides, not only himſelf, but perhaps a Wife, and ten Children may be injured by the Wounds a Man receives in his Reputation as to his Trade or Employment; and therefore ſtronger Intendments ought to be made in ſuch Words, than in any of the former, but not ſuch Intendments as the Hearers would not have made themſelves.

4. Yet it is to be known that ſuch Words are to be preciſely ſpoken of a Man's Trade——as to ſay of a common Carrier, that *he is a common Barretor*, no Action lies. *Hob.* 140.

5. So it is ſaid, that if *A.* keeps a Stable in *London*, and uſes to receive Horſes at Livery, and *J. S.* ſays *Thou buyeſt nothing but ſtinking, rotten Hay to poiſon Men's Horſes*; that no Action lies, becauſe he is no Innkeeper, and ſo it is not any Trade in Law; *Paſch.* 14 *Car. B. Jones* and *Joyce*; 1 *Roll's Abr. F.* 60. *pl.* 7. but *Q.* whether that be Law; for a Keeper of a Livery-Stable is a Trade mentioned in the Charter of *H.* 8. and confirmed by King *Charles* 2. which incorporated the Innholders of the City of *London*, and well known now to be a Trade diſtinct from that of an Innholder.

6. To ſay a Man *is a Knave, he has cozened me in falſe Meaſure of my Barley*, theſe Words are not actionable, unleſs you ſhew that the Plaintiff lived by ſelling Barley. *Mich.* 13 *Jac. C. B. Bray* and *Hays*, 1 *Roll. Abr. F.* 62. *pl.* 23. 1 *Brownl.* 4. *Hob.* 76.

7. So if a Man ſays of a Smith, that *he cozened him of a Noble in a Pair of Wheels*, theſe Words are not actionable, becauſe he may cozen him only in the Price. *Paſch.* 16. *Jac. Digner* and *Snelling*, 1 *Roll's Abr. F.* 62. *pl.* 24.

8. Words of a Shoemaker, *that it is no Matter who hath him, for I warrant whoever hath him he'll cut him out of Doors*, with an Averment, that where they were ſpoken, it amounted to as much as to ſay, *he would ruin his Maſter*, were held actionable. *Ellis* and *Hunt*, *March* 1 *Paſ.* 15 *Car.* 2. *B. R.* 1 *Roll's Abr. F.* 60. *pl.* 7.

9. If one ſays of a Merchant, that he is a Bankrupt, an Action lies. *Mich.* 7. *Ja. Long* and *Long*, 1 *Roll's Abr. F.* 61. *pl.* 18.

10. And it hath been ſaid, that it is otherwiſe if no Merchant.

11. But I apprehend, and ſo it appears in the Books, that if the Words are ſpoken of any Perſon that is within the Deſcription of Perſons, that by the Acts of Parliament may be a Bankrupt, they are actionable, as may be ſeen in the Caſe of *Cook* and *Tucker*, *Carthew* 330. where the Caſe of *Garrett* and *Shelſon* is cited, where theſe Words were ſpoken of a Weaver, *he is a pitiful idle Raſcal, and not worth a Groat*; for when a Man gets his living by a Trade, that conſiſts of buying and ſelling, and which is to be ſupported by the Opinion that Mankind have of his Credit and Circumſtances; Words ſpoken in Diminution of the Credit of ſuch Perſon, are equally as injurious, as if they had been ſpoken of a Merchant. 1 *Roll's Abr. F.* 60. *pl.* 11.

12. If one ſays of a Merchant, or of ſuch a Perſon, *I believe all is not well with him, there are many Merchants have lately failed, and I expect no otherwiſe of him*, an Action lies for ſuch Words. *Mich.* 22 *Car.* 2. the Caſe of *Vivian* and *Willet*, *Raymond* 207.

13. If one ſays of a Merchant, *you are a cheating Fellow, and keep a falſe Book, and I will prove it*, no Action lies without an Averment that there was a *Colloquium* of his *Trade*. *Todd* and *Haſtings*. 2 *Saund.* 307.

14. So to ſay, *he hath deceived me in a Reckoning, and his Debt-Book which he keeps in his Shop is a falſe Debt-Book, and I will make him aſham'd of his Calling*, are held to be Words not actionable in the Caſe. *Brooks* and *Clarke*, *Mich.* 21 *Jac.* 1 *Roll's Abr. F.* 62. *pl.* 22.

15. So to ſay, *he is a falſe Man, and I will prove it, and he keeps a falſe Debt-book, for he charg'd me with a Piece of three-piled Velvet which I never had*, were held actionable. *Brook*'s Caſe, *Moor* 409. *Hutton* 14. *Cro. Eliz.* 403. *Palmer* 65.

16. So theſe following Words were held to be actionable, *he is a cheating Knave, and keeps a falſe Debt-Book with which he cheats the Country*. 1 *Vent.* 263. but note there was a *Colloquium* of his Trade.

17. Theſe Words ſpoken of a Fuller were likewiſe adjudged to be actionable, *truſt him not, for he owes me* 10l. *and is not worth a Groat*. *Hutton* 124. So *he is not worth a Groat, he is* 100l. *worſe than naught*, were adjudged actionable Words, ſpoken of a Merchant. *Cro. Car.* 265.

18. So theſe Words, ſpoken of a Woman that carried on the Buſineſs of a Woollendraper were adjudged actionable, *ſhe keeps a falſe Shop-Book, and the Country complains againſt her for making her Debts twice over, or two times over*. 1 *Ventris* 117. *vide Hern's Pleader* 212. *Rob. Ent.* 46.

19. If a Man was a Merchant, and had left off his Trade; yet the calling him a Bankrupt was adjudged actionable, for he might exerciſe his Trade again. *Mich.* 7 *Jac. Long* and *Long*, *Paſch.* 44 *Eliz. B. R. Trin.* 39 *Eliz. B. R. Gardner* and *Hopwood*. 1 *Roll's Abr.* 66. *pl.* 16, 19.

20. If a Man ſays of a Tradeſman, *thou art a beggarly Fellow, and had it not been for my Help, he had not had a bit of Bread to put in his Mouth,*

and I have exactly caſt up his Eſtate, he is not able to pay above 2 s. *and* 6 d. *in the Pound to his Creditors of their Debts*; for this diſcredits him in his Trade, and an Action lies without averring any particular Damage. *Stile* 273. *Smith* and *Rooker*, *Intratur Paſch.* 1651. *Roll* 311. 1 *Roll's Abr. F.* 60. *pl.* 12.

21. In an Action upon the Caſe, if the Plaintiff declares that he was for ſeveral Years paſt a Brewer, and got his Living by brewing and ſelling of Beer to his Cuſtomers, and that he brewed wholſome Beer, and that the Defendant having a Diſcourſe with his Cuſtomers about his Trade, and of his Beer brewed by him, to the Intent to diſcredit him and his Beer, as well to his Cuſtomers as Neighbours, with whom he had before traded, ſaid theſe Words of the Plaintiff, and his Beer; *I will give my Mare a Peck of Malt, and lead her to the Water, and let her drink, and ſhe ſhall piſs as good Beer as any* Tom. Fenn, (who was the Plaintiff) brews. By ſpeaking of which Words, he was eſteemed among his Cuſtomers and Neighbours to brew and ſell unwholſome Beer, and they after refuſed to buy Beer of him, and to have any Dealing with him in his ſaid Trade. No Action lies for theſe Words, without ſhewing ſome particular Damage thereby, as that ſome particular Perſons abſtained from buying Beer of him, or ſuch like particular Loſs; for theſe Words ſhall be taken to have been ſpoken in Merriment and Jeſt; for it is impoſſible to be true in the Underſtanding of any Man, and it may be intended that he brewed ſmall Beer, and not unwholſome Beer. *Mich.* 15 *Car. B. R.* between *Fenn* and *Dixe*, adjudged *per totam Curiam*, in Arreſt of Judgment, after a Verdict for the Plaintiff. *Intratur Trin.* 15 *Car. Rot.* 838. 1 *Roll's Abr. F.* 59. *pl.* 1.

22. In an Action upon the Caſe for Words; if the Plaintiff declares that he had uſed the Trade of a Brewer for ſeveral Years, and had brewed wholſome Beer, and ſold to his Cuſtomers, by which he had got great Profit to himſelf; and that the Defendant, to the Intent to diſcredit him to his Cuſtomers, *ſuper Colloquium de & concernent'* the ſaid Occupation and Art of the Plaintiff, malitiouſly ſpoke theſe falſe Words of him, Lee's *Beer is unwholſome*, (innuendo *the Beer of the Plaintiff made for his Cuſtomers in his ſaid Trade*,) by which he is diſcredited, and has received Damage in the Sale of his Beer in his Trade, as he ought, before any Action lies for theſe Words; and upon this Declaration, tho' he does not charge him with any Deceit; for Beer may be unwholſome for want of good Brewing, or for other Neglect of his Servants. And though it does not appear, that the Defendant ſpoke theſe Words of Beer that he ſold to his Cuſtomers; yet upon this Declaration, (tho' the *innuendo* will not help it) it ſhall be intended ſuch Beer as he ſold to his Cuſtomers having a Diſcourſe of his Trade, and Brewers are puniſhable for ſelling unwholſome Beer by the Statute; and it is alledged, that by the ſpeaking of theſe Words he had Damage, and therefore this Action lies. *Mich.* 9 *Car. B. R.* between *Lee* and *Stradwich* adjudged; it being moved in Arreſt of Judgment by my ſelf. *Intratur Trin.* 9 *Car. Rot.* 1097. 1 *Roll's Abr. F.* 62. *pl.* 2.

What other Words ſpoken of a Tradeſman are actionable, and what not. See hereafter.

23. Words in Diſgrace of a Man's Profeſſion muſt appear to be ſpoken preciſely of his Profeſſion; as to ſay, *You may be aſhamed to employ that Knave, for you will receive Diſgrace and Shame by it; for he is a Knave and a proclaimed Knave in open Market*, by which he loſt ſeveral of his Clients; theſe Words are actionable. 1 *Roll's Abr. F.* 52. *L. S. pl.* 1.

24. So to ſay, *Is* H. *your Attorney, take Heed and follow him well, or elſe he will make you throw your Purſe over your Boſom*, was actionable. *Winch* 41 *Cro. Car.* 459.

25. *He is a baſe Rogue, and maintain his Wife and Children by his Knavery and cheating Tricks*; theſe Words were held to be actionable. *Shave* v. *Wakeman*, 14 *Car. B. R.* 1 *Roll's Abr. F.* 53. *L. S. pl.* 2.

26. *He is the falſeſt Knave in* England, *and will cut my Throat*, were adjudged actionable Words, ſpoken of an Attorney. *Dal.* 63. *Kel.* 140.

27. If a Man ſays of an Attorney, *Thou ſayſt thou art an Attorney, but I think thou art but an Attorney's Clerk, and if thou be, I will have thee pitch'd over the Bar next Term*; were adjudged to be no actionable Words, becauſe it is uncertain, whether that he himſelf would pitch him over Court. 7 *Jac. Trotman*'s Caſe, 1 *Roll's Abr.* 55. *pl.* 18.

28. A Man ſays of an Attorney, *that he is a common Maintainer of Suits*, no Action lies for theſe Words, becauſe it is no Diſcredit, for 'tis his Profeſſion to maintain Suits. *Hill.* 4. *J. B. Boxe* and *Barnaby*, 1 *Roll's Abr.* 53. *pl.* 6.

29. But to ſay, *Thou art a common Maintainer of Suits, and a Champertor, and I will have thee thrown over the Bar next Term*, is actionable. *Hob.* 163. 1 *Roll's Abr.* 53. *pl.* 6.

30. So to ſay, *He is a common Stirrer up of Suits, and a Diſturber of the Peace, and ſo a Mover of unjuſt Actions*, was adjudged actionable. *Het.* 140. by eight Judges.

31. So to ſay, *He ſets People together by the Ears, and we ſhall have him indicted for a common Barretor*, was adjudged actionable. *Carter* 214.

32. So if one ſays of a Surgeon, *He poiſoned the Wound of* J. S. *for Gain*, an Action will lie; for the Words ſcandalize him in his Profeſſion. *Mich.* 33 & 34 *Eliz.* 2 *And.* 268.

33. So if one ſays of a Midwife, *many have periſhed for her Want of Skill*, an Action lies. *Paſ.* 7 *Car. Flower*'s Caſe. *Cro. Car.* 211.

34. But where Words don't immediately tend to a Man or Woman's Profeſſion, yet if in their Profeſſion they receive Damage thereby, an Action lies; as to ſay of a School-Miſtreſs *She is a Whore, and* J. S. *keeps her as his Whore*, theſe Words are actionable, with ſpecial Damages ſhewn. 1 *Ventris* 21.

What other Words ſpoken of an Attorney are actionable. See hereafter.

Of Words in Diſgrace of a Man's Dignity, for which an Action of Scandalum Magnatum *lies.*

An Action of *Scandalum Magnatum* was firſt appointed, and took its Being as to the Shape we now find it in, from 2 *Rich.* 2. *cap.* 5. where it is ſaid, " *Item*, of Deviſers of falſe News and horrible Lies of Prelates, Dukes, Earls and other Nobles, and Great Men, and of the Chancellor, Treaſurer, Clerk of the Privy Seal, Steward of the King's Houſe, Juſtices of the one Bench, or the other, and other Great Officers of the Realm, &c. *It is enacted*, none ſhall deviſe, ſpeak, or tell any falſe News, or other falſe Things, of Prelates, Lords, and of others aforeſaid, whereof Diſcord or Slander might riſe within the Realm; and he that doth the ſame ſhall incur, and have the Pain thentofore ordained by the Statute of *Weſtminſter* 1". which wills, that he be taken and impriſon'd, till he have found him of whom the Word was firſt moved.

By the ſeveral Caſes in the Books hereafter-mentioned theſe following Points have been adjudg'd.

1. That this Statute extends to Viſcounts, tho' there were none at the Time of making the Act. *Cro. Car.* 13. Viſcount *Say and Seal* v. *Stephens*, *Palmer* 361.

2. That it extends to Biſhops, ſee the Biſhop of *Wincheſter*'s Caſe in the 2d. of *H.* 8. cited in 1 *Leon.* 336. 1 *Cro.* 1. Biſhop of *Norwich* v. *Prickett*, Biſhop of *Cheſter* v. *Jones*, 3 *Keble* 315.

3. But theſe Words were held to be not actionable of the Archbiſhop of *York*, *That he was a covetous and malitious Biſhop*. *Moor* 38.

4. That it lies for general Words of Slander, tho' nothing certain is charged; as where one ſaid of a Peer, *he is an unworthy Perſon, and acts againſt Law and Reaſon*. 2 *Mod.* 150, 151. Lord *Townſend* v. *Hughes*,

See Judge *Atkins*'s Argument, for the Words not being within the Statute. 2 *Mod.* 161.

5. And what might be a good Exception againſt Words to make them not actionable in the Caſe of a common Perſon, will not hold in an Offence of ſo high a Nature, as this is, from the Dignity of the Perſon of whom they are ſpoken; as where the Words were, *I met* J. S. *whom I do not know, but my Lord* Peterborough *ſent after me to take my Purſe.* 1 *Lev.* 277. Lord *Peterborough* v. Sir *John Mordant.* 2 *Cro.* 196. 1 *Ventris* 59, 60.

6. But *ſee Gouldſb.* 115. in the Caſe of the Earl of *Lincoln* againſt *Michelborne*, where the Words were, *the Earl of* L——'s *Men, by his Command, took the Goods of one* H. *by a forged Warrant*, there it was held an Action of *Scandalum Magnatum* would not lie, becauſe it was not ſaid the Earl knew the Warrant to be forged.

7. Where the *Venue* was not to be chang'd upon the common Affidavit. *Carthew* 400. Duke of *Norfolk* v. *Alderton*, 2 *Show.* 96. *Gerrard* v. *Loyd*, 1 *Syd.* 185.

8. Yet in the Caſe of the Earl of *Shaftsbury* v. *Cradock*, and the ſame againſt *Graham*, *Skinner* 40, 44. it was granted, that the *Venue* ſhould be chang'd where the Reaſon of it was Potency, and the Plaintiff was conceiv'd to have a very great Intereſt in the Place where he had laid his Action. *T. Jones* 192, 198. In a Motion to change the *Venue* in the Caſe of the Marquiſs of *Dorcheſter*, in 2 *Mod.* 216. *North* Ch. Juſtice ſaid, he always took it as a current Opinion, that in a *Scandalum Magnatum*, the *Venue* could not be chang'd; but *Atkins* was of the contrary Opinion.

9. Where it was ſaid no Coſts are to be given the Plaintiff. 2 *Show.* 506.

10. Where the Court denied the Holding the Defendant to ſpecial Bail. 3 *Mod.* 4. the Earl of *Mackelfield*'s Caſe.

11. Where it was adjudged this Statute was not miſrecited, though the Plaintiff had not exactly taken in all the Words of the Statute in his Declaration; inaſmuch as there was enough recited to maintain the Action. Earl of *Shaftsbury* v. Lord *Digby*, 2 *Mod.* 98. 3 *Keb.* 631, 641, 647, 661. *T. Jones* 48.

12. Where the Plaintiff had ſet forth, that the Defendant ſpoke lies of the Plaintiff, *viz. hæc Anglicana verba ſequentia*, and does not alledge he ſpoke the Words; but it was adjudged that the *mendacia*, which were alledged to have been told, were the *Engliſh* Words which were ſpoken, and the *viz. hæc Anglicana verba ſequentia*, being in the Accuſative Caſe, are govern'd by the ſame Verb, which governs the precedent Words, *viz. Horribilia mendacia*; beſides, for the ſupporting of an Action, the *viz.* may be tranſpoſed, and then it will be well enough, *viz.* the Defendant ſpoke *hæc Anglicana verba*, *viz.* Lies of the Plaintiff. Earl of *Shaftsbury* v. Lord *Digby*, 2 *Mod.* 98.

13. Where the Declaration was held good, tho' it did not conclude *contra formam Statuti.* Lord *Leiceſter* v. *Mandy*, 2 *Sid.* 21, 22, 30, 31.

Thirdly, *There muſt be a ſufficient Certainty in the Thing charged, and not by Inference or Argument; or if with a Crime, he muſt not be charged with a bare Intent.*

1. Where one Man ſaid of another, *Thou ſhouldſt have ſet in the Pillory if thou hadſt thy Deſerts*, no Action will lie, becauſe the Words are too general, and no Certainty of the Charge. *Moor* 243. *pl.* 383.

2. So where one Man ſays to another, *Thou deſervedſt to be hang'd*, no Action lies for theſe Words; for this only expreſſes his Opinion of him. *Hake* v. *Melton*, *Yelv.* 90.

3. So where the Words were, *Thou art a ſcurvy bad Fellow, and haſt done that thou deſervedſt to be hang'd*, held not actionable. 1 *Roll's Abr. fol.* 43. *Letter G. pl.* 5.

4. Where the Words were, *Thou haſt ſtolen my Mare, or conſented to the Stealing her*, was held not actionable; for there is no Certainty in the Thing charged. *Cro. Eliz.* 780.

5. Where one Man ſaid of another, *He ſtruck his Cook on the Head with a Cleaver, and cleaved his Head, and one Part lay upon one Shoulder, and another Part on the other*; no Action lies, for it is not directly alledged that he killed the Cook, only by Inference and Argument. *Cro. Jac.* 184. *Holt* v. *Aſtrigg*.

But Words that may affect Life, Limb, Member or Liberty, are all actionable, without any particular Damage averr'd.

1. If one Man ſays of another, *Thou art a perjured Fellow, for thou haſt forſworn before the Lord Biſhop of* Norwich, no Action lies for theſe Words, becauſe he does not ſay this was in the Biſhop's Court, and ſo uncertain whether it was Perjury, and it ſhall not be intended to be in his Court. *Keeble* v. *Page*, 1 *Roll's Abr. fol.* 69. *pl.* 41. Vide *Cro. Ja.* 436. where there is the ſame Caſe, and the Words there ſaid to go further, *Thou wert forſworn in the Biſhop of* Glouceſter's *Court*; but otherwiſe adjudged in the Caſe of *Lee* v. *Secombe*, where the Words were, *he was faſly forſworn in the Court of the Biſhop of* Exon, at *Exon*, and the Plaintiff had Judgment.

2. The like Point was adjudged in *Hob.* 283. in the Caſe of *Adams* and *Flemming*.

3. In the Caſe of *Skinner* v. *Trebe*, where the Words were, *Thou waſt forſworn in Collet Court*; it was adjudged for the Defendant, becauſe it does not appear, that there was any Cauſe depending there, nor that *Collet Court* was a Court of Record; and without ſome other Deſcription, the Court can't take Notice that it is a Court of Record. *Cro. Jac.* 190. *Moor* 404. *Cro. Ja.* 204. *Cro. Eliz.* 178. *Cro. Car.* 135.

4. Where one Man ſays of another, *Thou art a forſworn Fellow, and I will prove thee one, for thou ſetteſt thy Hand to a Bond of mine, and ſwore nay*; it was held no Action lay for the Incertainty. 1 *Roll's Abr. fol.* 70. *pl.* 43.

5. Where one ſays of another, *Thou art a forſworn Man, I will teach thee the Price of an Oath, and I will ſet thee in the Pillory*; an Action lies for theſe Words, becauſe it ſhall be intended ſuch a Forſwearing, for which he ſhould ſtand in the Pillory, and not a Voluntary Oath. 1 *Roll's Abr. fol.* 70. *pl.* 46. *Hetley* 63. *Cro. Jac.* 613. *Cro. Eliz.* 572. *Godb.* 340.

6. Obſerve therefore the Difference between calling a Man *perjured*, and calling a Man *forſworn*, for every Forſwearing is not Perjury.

7. If one Man ſays to another, *Thou art forſworn, and didſt take a falſe Oath at the Aſſizes at* Hereford *againſt* J. S. Here 'tis neceſſary there ſhould be an Averment, that this was at a Trial, or before the Court or Jury, for it might be at a private Houſe, or other Place, and yet at the Aſſizes. *Pritchard* againſt *Smith*. 1 *Roll's Abr.* 42. *pl.* 28. 1 *Ventris* 195.

8. But where the Words were, *That he was falſly forſworn before the Juſtices of Aſſize, between* A. *and* B. they were held actionable. *Hetley* 119.

9. Where one ſays of another, *Thou haſt made forged Writings, and thou ſhouldſt have loſt thy Ears for it*; it is ſaid no Action lies for theſe Words, becauſe it is altogether uncertain what Writings he intends by the firſt Words; for perhaps he may intend ſome Writings, the Forging of which will not deſerve the Loſs of his Ears; and then the laſt Words do not explain his Intention in as much as it may be, that this was but a bad Concluſion of the Premiſſes. 1 *Roll's Abr.* 65. *pl.* 8. *Winch* 39, 40, 90. 3 *Leon.* 231. 1 *Leon.* 101. *Cro. Eliz.* 853. 3 *Leon.* 231. *Cro. Eliz.* 296. 3 *Bulſtr.* 265. 1 *Roll's Rep.* 431.

10. Where a Man ſaid to *J. S. Thou haſt cauſed a Deed to be forged, and a dead Man's Hand to be put to it, and cheated and cozened my Husband of his Land*; an Action lies for theſe Words, tho' they expreſs not what manner of Deed it was, whether it was ſuch a Deed as was within the Statute of Forgery; for Forgery is an Offence at common Law, for which the Party may be indicted, tho' not within the Statute. *Pudſy* v. *Pudſy*, 1 *Roll's Abr.* 66. *pl.* 10.

11. Words of *Theft* are actionable, tho' they don't charge the Party with a Crime, that amounts to any more than Petty Larceny. 1 *Roll's Abr.* 43. *L. H. pl.* 1.

12. And it may not be improper here to take Notice, that this Action does not lie only for Words that charge a Man with having committed a particular Fact; as by ſaying, *Thou haſt ſtolen my Horſe, or the Horſe of* John Stiles, but likewiſe for Words that charge a Man with being Guilty in general of Crimes of that Nature; as to ſay of another, *he is a Thief*, an Action upon the Caſe was held to lie, *Minors* v. *Liford*, 1 *Roll's Abr. fol.* 42. *pl.* 1. but this Caſe is reported in *Cro. Jac.* 114. by the Name of *Minors* v. *Leeford*; and there the Words are ſaid to be, *Thou art a Thief, and haſt ſtolen my Maſter Sir* George's *Tree*; but the ſame Point was adjudged in *Cro. Eliz.* 857. *Robins* v. *Franks*, and in 2 *Bulſtr.* 134. *Ow.* 47.

13. So to ſay, *I charge you with Felony*, an Action lies. *Noy* 124. *Baſy* v. *Child.* 1 *Roll's Abr. fol.* 43. *pl.* 3. 1 *Jones* 302. *Cro. Car.* 276, 277. *Latch* 175. *Cro. Car.* 277.

14. So where there was a Diſcourſe concerning the Wife of *J. S.* and then one ſaid, *Who will ſay this of me but J. S.'s Wife, who is a Whore and a Thief*, was adjudged actionable. *Griffith* v. *Johns*, 1 *Roll's Abr. fol.* 43. *pl.* 2.

15. And an Action was brought for theſe Words, *George Button is the Man who killed my Husband*; and tho' in *Cro.* 306. Words of the like Nature were thentofore not held to be actionable; yet the Court was of Opinion that theſe Words were actionable, and ſeveral Caſes were cited to prove theſe Words were not actionable; but the Court ſaid, *Diſtinquenda ſunt Tempora*; for in thoſe Days People were litigious, and therefore the Judges diſcouraged Actions for ſlanderous Words; but now too much Liberty is taken to abuſe People with their Tongues, and therefore they ſhould be reſtrained by Juſtice, ſo that now any Words that are ſpoken malitiouſly ſhall be taken to be *in Malam Partem*, &c. *Modern Caſes in Law and Equity* 24. *Button* v. *Heyward and his Wife*, *Cro. Eliz.* 49, 270, 883. 4 *Rep.* 15. 2 *Cro.* 166. *Cro. Car.* 489. 2 *Lev.* 150. *Salk.* 695. 1 *Ventr.* 117. *T. Jones* 144. 1 *Sid.* 52.

16. So not only Words which charge a Man with being *a Thief, a Highwayman, or a Murderer* in expreſs Words, are actionable, but likewiſe when a ſcandalous Epithet is put to defame a Man, it renders Words actionable; as to call a Man *Coney-catching cheating Thief*, have been adjudged actionable. *Bodhead* and *Smith*, *Trin.* 9 *Car. Roll* 12, 48. 1 *Roll's Abr.* 47. *Letter I, pl.* 7.

17. And it is proper to take Notice, that there is great Difference between Words where the Epithet or adjective Word is that, which, had it been a Subſtantive, would have been actionable, but is join'd to a Word that is not actionable; and an Epithet or Adjective, which would have not been actionable, had it been a Subſtantive, yet being joined with a Word, which, had it ſtood alone, would have been actionable, renders the whole Words likewiſe ſo; as for Example, in the laſt Inſtance, to ſay to another, *Thou art a Coney-catching cheating Thief*, is adjudged actionable. Why? Becauſe to call a Man *Thief* is actionable, and the other Words, tho' they are not actionable in themſelves, nor would have been ſo, had they been Subſtantives; yet they do not mitigate or explain away the ſtrong Power of the Words importing that the Perſon ſpoken of is a Thief. But now in the firſt Inſtance, to ſay to a Man, *Thou art a Coney-*

catching cozening Rogue, *Cutpurſe Rogue*, yet theſe Words are not actionable, becauſe all but Rogue are adjectives. *Betts* and *Trevanion*, *Cro. Jac.* 536. reported in *Palmer* by the Name of *Trevilian* and *Bettie*'s Caſe, and in 2 *Roll* 91. reported by the Name of *Brett* and *Trivilian*'s Caſe. But if a Man calls another *buggering Rogue*, and ſays, *I could hang you*, theſe Words are actionable, becauſe a Man cannot be a buggering Rogue without having committed Sodomy. 1 *Sid.* 373. So to call a Man a *perjur'd Knave*, an Action will lie, becauſe the Import of the Words communicate and leave a ſtrong Idea with the Hearer, that he had committed Perjury. 4 *Co.* 19. *Stile* 6.

18. *Thou art a thieviſh Knave*; theſe Words are not actionable, becauſe they only import a corrupt Inclination to Theft, 4 *Co.* 19. but to call a Man *thieving Rogue* is actionable, becauſe they import, that a Man has committed an Act of Theft. 1 *Sid.* 373.

19. If a Man ſays to another, *Thou wouldſt have killed me*, no Action lies, becauſe he charges him with a bare Intention only. 1 *Roll's Abr. fol.* 51. *pl.* 8.

20. So, *Thou wouldſt have robb'd me*, was held not actionable, becauſe no Act was ſhewn to be done in order thereto. *Cro. Eliz.* 250. *Cro. Eliz.* 710.

21. But it was adjudged in *Lane* 98. in the Caſe of *Scott* v. *Helliers*, where the Words were, *She would have cut her Husband's Throat, and did attempt to do it*, that an Action did lie for theſe Words, becauſe it was Matter of great Slander, and good Cauſe, for the Husband to be divorc'd. 1 *Roll's Abr.* 51. *pl.* 9.

22. In the Caſe of *Crofts* v. *Brown*, 3 *Bulſtr.* 167. theſe Words were adjudged not to be actionable, *Sir* Herbert Crofts *keepeth Men to rob me*, and a Caſe was there cited of Sir *John Harper* and Sir *Francis Beaumont*, where the Words were, *that Sir* Francis *ſhould come to the Houſe of Sir* John Harper, *and that he and his Servants ſhould go about to kill him*, theſe Words were likewiſe adjudged not actionable. *Cro. Jac.* 56.

23. In 1 *Roll's Abr.* 72. *pl.* 9. where the Words were, *Thou muſt needs be richer than I, for thou didſt coin thirty new Shillings a Day, thou art a Coiner of Money*; it is there ſaid to be adjudged that theſe Words are not actionable, becauſe he might be a Coiner of Money in the Mint; but that Caſe hath been denied to be Law, as reported in *Salkeld* 697. in the Caſe of *Speed* v. *Perry*.

24. Where the Words were, *You are a Rogue, and broke open a Houſe at* Oxford, *and your Grandfather was forced to bring over* 30 l. *to make up the Breach*; theſe Words were adjudged actionable, for a Man who heard them could not intend any other, but that he meant a felonious breaking of the Houſe. *Skinner* 364.

25. In an Anonymous Caſe, in 3 *Mod.* 280. where the Words were, *He ſtole the Colonel's Cloth*, it was made a Queſtion whether theſe Words were actionable; but it was adjudged that they were ſo; for here is a Charge of Felony; and if it had been that he had ſtolen the *Parſon's Sheep*, or my *Lord's Horſes*, it would have been certain enough.

Yet tho' in ſome of the foregoing Inſtances the Words were not actionable, becauſe they were of the Import only of an ill Intention; however, there are ſeveral Inſtances where Words that carry a Senſe of a Man's Intention only, are actionable.

1. As to ſay of another, that *he lay in Wait at Shooter's Hill to rob a Man*, theſe Words are actionable, becauſe the lying in Wait was an ill Act. *Paſch.* 15 *Jac.* *Lock* and *Lock*'s Caſe, 1 *Roll's Abr.* 44. *pl.* 13. *Popham* 128. *Lane* 98.

2. It was adjudged in 2 *Bulſtr.* 206. that no Action would lie for theſe Words, *Thou art a Knave, and haſt laid in Wait to kill me, and haſt hired one* W. *to kill me*, becauſe here is only a naked Intention; but if it

had been *that he hired a Man to rob me*, it had been actionable; and ſo adjudged in *Moor* 186. *pl.* 332. and adjudged in *Moor*, that as to the principal Caſe it was, that ſuch a Man's Wife ſaid, *that the Defendant laid in Wait to murder the Plaintiff*, the Words were actionable, by *Wray* Chief Juſtice. *Lane* 98. *Cro. Eliz.* 618. *Cro. Eliz.* 16. *Godb.* 43. 3 *Bulſtr.* 167.

3. *Thou wouldſt have taken my Purſe from me upon the Highway*, held not to be actionable. *Golds.* 202. So, *Thou wouldſt have robbed me*, not actionable, becauſe no Act is ſhewn to be done in order thereto. *Cro. Eliz.* 250.

4. If one ſays of another, *She ſent a Letter to my Maſter, and thereby willed him to poiſon his Wife*, theſe Words are actionable. *Paſſy* and *Mountford*, *Cro. Eliz.* 746.

5. So to ſay, *that the Plaintiff had placed a Woman in* J. S.'s *Houſe, with an Intent to poiſon her*, was held to be actionable, becauſe they appear'd to be malitiouſly ſpoken. 2 *Bulſtrode* 201.

For other Caſes under this Head, ſee the ſeveral Caſes following.

1 *Roll's Abr.* 50, 51. *Letter Q.*

Cro. Eliz. 618. *Anthony Thebald* againſt *Brook.* 4 *Co.* 16 *b.*

Godb. 43. *Anonymous.*

Moor 409. *pl.* 555. *Weeks* v. *Taylor.*

Cro. Eliz. 349. the ſame Caſe.

2 *Syd.* 76. *Langly* againſt *Clark.*

1 *Jones* 195 *Anthony Lewknor* againſt *Cruchley.* *Cro. Car.* 140. the ſame Caſe.

3 *Bulſtrode* 167. Sir *Herbert Crofts* againſt *Brown.*

Palmer 278. *Bennett*'s Caſe.

Cro. Car. 337. *Anonymous.*

Cro. Jac. 158 *Harris* againſt *Dixon.*

Yelv. 72. S. C.

Cro. Eliz. 308. *Preſton* v. *Pindar.*

Godb. 202. *Anonymous.*

Cro. Eliz. 250. *Coles* againſt *Haveland.*

Cro. Eliz. 710. *Levorſage* v. *Smith.*

3 *Lev.* 231. *Warner* v. *Cropwel* is cited, where there is the ſame Point.

Yelv. 57. Sir *John Harper* againſt *Beamond.* *Cro. Ja.* 56. the ſame Caſe.

Dal. 62. *pl.* 174.

Moor 63. Sir *Edward Bray* againſt *Andrews.*

Cro. Eliz. 308. *Ball* againſt *Roane.*

Hut. 122. *Glaſier* againſt *Heliar.*

1 *Vent.* 323. *Anonymous.*

Moor 418, 419. *Hilliard* againſt *Conſtable.*

2 *Leo.* 30. *Clark* v. *Green.*

2 *Bulſtr.* 206. *Murrey* againſt—

Cro. Eliz. 191. *Tibbot* againſt *Haynes.*

Cro. Eliz. 684. *Eaton* againſt *Allen.*

1 *Bulſtr.* 201. *Dean* againſt *Eton.*

Cro. Eliz. 746. *Paſſy* v. *Mondford.*

Hob. 180. Sir *John Sydenham* v. *Mayo.*

Dyer 26. *Ruſſell*'s Caſe.

Hetley v. *Alice Reading*'s Caſe.

Cro. Eliz. 6. *Edward*'s Caſe.

In ſome Caſes the Certainty of Words does not appear without a particular Averment.

1. If a Man ſays of another, *he is as very a Thief as any in* Warwick *Gaol*, no Action lies for theſe Words without an Averment, that there was a Thief there. *Hill.* 33 *Eliz.* *Lacy* and *Reynolds.* *Cro. Eliz.* 214.

2. So to ſay of another, *that there never was a Robbery committed within forty Miles of* Wellingborough, *but thou hadſt thy Part in it*; this Action will not lie without an Averment, that there was a Robbery committed within forty Miles. *Mich.* 35 & 36 *Eliz.* *Ball* and *Reane*, *Cro. Eliz.* 308.

3. So to ſay, *that if ever a Man was perjur'd*, W. *was*, held not to be actionable without an Averment, that a Man was perjured, for the Law will not preſume ſo much Wickedneſs. *Noy* 116. *Cro. Eliz.* 342.

4. If one Man ſays to another, *Thou didſt kneel upon the Body of* J. S. *ſo as the Blood guſhed out of diverſe Parts of his Body, whereby he died,* no Action lies, without an Averment of the Death of *J. S. Mich.* 20 *Jac. B. R. Ellis* and *Knight*, 1 *Ventr.* 117. But it ſeems *Twiſden* ſaid, that the latter Opinions have been, that ſuch Averment is not neceſſary, and that the Action lies, unleſs it appears upon the Record that the Party is alive. 1 *Syd.* 53. 2 *Bulſtr.* 42.

5. And that ſeems to be the better Reſolution; for theſe Words are adjudged to be actionable to ſay, *Thou haſt killed a Man,* without mentioning any Man by Name, for that is a great Slander. *Paſ.* 15 *Jac. B.R. Cooper* and *Smith*, 1 *Roll's Abr.* 77. *L. E. pl.* 3. *Popham* 128. *Bridgman* 60. *Cro. Jac.* 403.

6. But a ſtronger Caſe appears in 1 *Roll's Abr.* 49. *pl.* 8. to prove the Authority of *Twiſden*'s Opinion, which is the Caſe of *Web* and *Poor*; and the ſame Caſe reported in *Noy* 63. *Cro. Eliz.* 569. where a Man ſays of another, *I will call him in Queſtion for poiſoning his own Aunt, and I make no Queſtion but to prove that he hath poiſon'd his Aunt,* held that an Action upon the Caſe lies without an Averment, that ſhe was either dead or poiſon'd.

7. If a Man ſays of another, *that as ſure as God governs the World, and the King this Kingdom, ſo ſure hath* J. S. *committed Treaſon,* an Action lies without any Averment. *Mich.* 13 *Car.* 2. *Day* and *Clinch*, 1 *Syd.* 53.

8. But if one Man ſays of another, *Thou waſt indicted for Felony at a Seſſions holden at (ſuch a Place)* no Action will lie, without an Averment, that he was not indicted. *Paſ.* 16 *Jac. Bland*'s Caſe. *Hob. fol.* 219.

9. So that this Averment is only neceſſary to ſuperinduce a ſufficient Certainty, where no preciſe Certainty appears in the Words, or a neceſſary Intendment to be applied thereto; but where-ever a ſufficient Certainty appears, either in the Words or in the Diſcourſe, upon which the Words were ſpoken, or a neceſſary Intendment of Certainty is to be applied thereto, there needs no Averment; as if a Man ſets forth, *that one* J. S. *filed a Bill in Chancery againſt him, to which he made a true Anſwer*; and that afterwards upon a Diſcourſe concerning the ſame, the Plaintiff ſays to *C.* then in Company, *I'll not talk any more with you, now your two Affidavit Men are come,* upon which *B.* the Defendant ſays of the Plaintiff, A. *need not ſay ſo, for he was abſolutely forſworn in his Anſwer to* J. S.'s *Bill*; there needs no Averment that he meant as to the Bill of which the Diſcourſe was had; and the Action lies, unleſs another Bill appear'd to have been brought by *J. S. Stede* and *Allen*, 1 *Roll's Abr.* 41. *pl.* 25. *Cro. Car.* 321.

10. So if a Man ſays to another, *that he has killed the Wife of* J. S. *or one of the Sons of* J. S. *or that he has ſtole his Horſe,* an Action lies without an Averment, that he had a Wife, a Son, or that he had an Horſe. *Paſ.* the 15th of King *James*, *Cooper* and *Smith*'s Caſe, 1 *Roll's Abr.* 77. *L. E. pl.* 2.

11. So to ſay, *Thou art a Thief, and haſt robb'd my Son,* theſe Words are actionable without an Averment that he had a Son, becauſe it ſhall be neceſſarily intended that he had a Son, or elſe he would not have affirm'd it. *Noy* 55.

In what other Caſes it lies with or without an Averment, ſee the following Caſes.

1 *Roll's Abr.* 77, 78, 79.
Danvers 150, 151, 152.
Poph. 128. *Cooper* againſt *Smith*, *Cro. Jac.* 423.
Cro. Jac. 427. Sir *William Brunkard* againſt *Segar*.
Bridg. 60. *Cooper againſt Smith.*
Noy 55. *Elwin* againſt *Moor.*
Lit. Rep. 166.

1 *Syd.* 327. *Baker* againſt *Morfue.*
Cro. Eliz. 823, 824. *Talbot* againſt *Caſe.*
Cro. Jac. 331. *Barrons* againſt *Ball.*
Stile 66. *Carver* againſt *Pierce.*
1 *Vent.* 117. *Phillips* againſt *Kingſton.*
Syd. 52 *Dacey* againſt *Clinch.*

2 *Bulſtr* 42. *Billing* and *Knight*.
Hob. *Rep*. 8. *Yardley* againſt *Ellill*.
1 *Syd*. 227. *Bull* againſt *Mayo*.
Hob. 6 *Milles* againſt *Jacob*.
Cro. *Jac*. 343. *Jacob* and *Milles*.
Trin. 39 *Eliz*. *B*. *Webb* and *Poor*.
Noy 63.
Cro. *Eliz*. 569. S. C.
Stile 65.———and *Long*.
Cro. *Eliz*. 888. *Dawes* againſt *Bolton*.
Lit. *Rep*. 166.
2 *Bulſtr*. 141, 142. *Painter* againſt *Warn*.
Cro. *Eliz*. 783. *Heath* againſt *Pole*.
Cro. *Eliz*. 214. *Peake* againſt *Pollard*.
Noy 116. *Wittam*'s Caſe.
Yelv. 90. *Heake* againſt *Moulton*.
Hutt. 72. *Potter* againſt *Browne*.
Cro. *Eliz*. 308. *Preſton* againſt *Pinder*.
Cro. *Eliz*. 342. *Baxter* againſt *Shade*.
2 *Roll's* *Rep*. 92.
Hob. 219. *Drury* againſt *Fitch*.
Cro. *Car*. 40 *Love* againſt *Plater*.
Brownl. 13 *Adams* againſt *Fleming*.
Hutt. 18. *Bland*'s Caſe.
Cro. *Jac*. 687. *Foſter* and *Browing*.
Hutt. 72. *Potter* againſt *Browne*.
Winch 70. S. C.
Winch 89. S. C.
Stile 221. *Winter* againſt *Barnard*.
Mich. 13 *Car*. 2. 1 *Syd*. 53. *Dacy* v. *Clinch*.
Badcock againſt *Atkins*. *Cro*. *Eliz*. 416.
Cro. *Jac*. 184. Sir *Thomas* Holt v. *Aſtgrigg*.
2 *Cro*. 126. *Johnſon* v. *Aylmer*.
2 *Cro*. 331. *Ratcliff* v. *Michael*.
3 *Cro*. 177 *Shalmer* v. *Foſter*, and his Wife,
3 *Cro*. 443. *Slocomb*'s Caſe.

Fourthly, *The Words muſt be directly applied to the Perſon thereby charged, and not by Inference or Argument.*

1. As where the Words were, *She had a Child, and either ſhe or ſome body elſe made away with it*, was held not actionable. *Carter* 53, 56.

2. But it is not neceſſary that they ſhould be ſpoken of the Party by his Name, if there is a ſufficient *deſignatio Perſonæ*, as where the Perſon ſpeaking of ſeveral Defendants, againſt whom a Suit had been brought ſays, *This Defendant, and the other ſixteen Defendants are the Perſons who help'd to murder* Henry Farmer; this is a ſufficient Deſcription of the Perſons, and every one of them well entitled to an Action, as it was adjudged in this Caſe of *Foxcroft* and *Lacy*, *Hob*. 89.

3. If *A*. ſays to *B*. *Thou art a forſworn Fellow*; whereupon *B*. asks whether he would ſay he was perjur'd, and *A*. anſwers? *Yes, if you will have it*, it was held no Action lies. *Levermore* v. *Martin*, *Cro*. *Eliz*. 297.

4. Where a Perſon, without any precedent Communication, ſays, *one of the Servants* of *J*. *S*. (he having ſeveral) *is a notorious Felon or Traitor*, here, for the Incertainty of the Perſon, no Action lies. 4 *Co*. 17.

5. Where a Man said, *my Brother is perjur'd*, theſe Words were held actionable, and a ſufficient *Deſignatio Perſonæ*, with an Averment, that they were ſpoken of him. But *Yelverton* was of another Opinion, for it might be he had diverſe Brethren, and at that Rate, every one of them might have an Action, and the *Innuendo* the Plaintiff, or any Averment, will not import a Slander to be certain which was not certain before; for ſays he, actionable Words ought to import in themſelves preciſe Slander without Ambiguouſneſs, ſo that every one that hears them might intend of whom they are ſpoken. But *Williams* was of another Opinion; for ſays he, the Plaintiff ſets forth that theſe Words were ſpoken of him; and the Jury having found the Defendant Guilty, it is ſufficiently aſcertained to the Court they were ſpoken of no other; and the Plaintiff had Judgment. *Wiſeman* v. *Wiſeman*, *Cro*. *Jac*. 107.

6. If *A.* ſays to *B.* *one of us two is perjur'd*, and *B.* ſays to *A.* *it is not I*, and *A.* ſays again, *I am ſure it is not I*, *B.* ſhall have an Action for theſe Words, for the ſubſequent Words do apparently ſhew that he intended *B.* to be the Perſon perjur'd. 1 *Roll's Abr.* 75. *Letter C. pl.* 4.

7. It is ſaid in *Carter* 56. where the Words were A. *or* B. *hath killed* J. S. that *A.* may have an Action, averring, that neither he or *B.* killed him.

8. Where Words are uncertain of whom they are ſpoken, there muſt be an Averment that they were ſpoken of the Plaintiff.

9. Where the Words are in themſelves certain, ſo that it may be intended that the Speaker intended a Perſon certain, there they may be made actionable by an Averment. *Mich.* 3 *Jac. B. Wiſeman*'s Caſe, 1 *Roll's Abr. Cro. Ja.* 107.

10. If one Man ſays to another, *my Maſter Mr.* Browne *hath robb'd me of all my Goods*, *Browne* may have an Action againſt him, averring that he ſpoke the Words of him, without averring that he was his Maſter, for the Averment that he ſpoke them of him implies as much. *Browne* and *Lane*, 1 *Roll's Abr.* 1 *Brownl.* 10. 1 *Syd.* 52. *Cro. Jac.* 443.

11. If a Man ſays to A. *Thy Husband and his Maſter have ſtolen my Wood*; the Maſter ſhall not have an Action without an Averment that he was Maſter to the Husband of *A.* tho' he avers generally the Words ſpoken of him. *Trin.* 11 *Jac.* 1. *Liford* and *Stamp*, 1 *Roll's Abr.* 75. *pl.* 3. *S. C. Cro. Ja.* 443.

12. But it is to be obſerved in the Caſe of *Harvey* v. *Chamberlain*, where the Words were, *thy Son is a Murderer*, without ſhewing that the Father had no other Sons, are not actionable; for if he hath others it is uncertain which he intended; and this Diverſity was taken by the Court, that if one ſays to a married Woman, *thy Husband*, or to a Servant, *thy Maſter*, or to a Son, *thy Father*, there, if the Words will bear an Action, there needs no Averment, becauſe there is a certain Deſcription of the Party; for ſhe can have but one Husband, nor the Servant properly but one Maſter, nor the Son but one Father; otherwiſe is it where the Words are not a Deſcription of the individual Perſon, but may be attributed to many, there an Averment ought to appropriate the Words to the Perſon of the Plaintiff; but if the Words firſt above-mentioned had been, *thy Son* William, &c. it had been certain enough. *Palmer* 283.

Where Averments are Neceſſary, and what are proper Averments in the like Inſtances, ſee the following Caſes.

1 *Roll's Abr.* 80, 81, 82.
2 *Bulſtr.* 32 *Liſard* againſt *Stamp.*
Allen 32. *Peirſon* againſt *Dawſon.*
Moor 63. *pl.* 174. *Bray* and *Andrews.*
Dall. 66.
1 *Roll's Abr.* 70. *pl.* 48. *S. C.* but the ſame Point does not appear.
1 *Roll's Rep.* 227. *Scorie als' Scorier* againſt———
Cro. Eliz. 861. *Taylor* againſt *How.*
Cro. Ja. 240. *Beaumond* againſt *Haſtings.*
Winch 102. *Crompton* againſt *Philpot.*
Cro. Ja. 673. *Smith* againſt *Ward.*
Raym. 86, 7. *Terry* againſt *Hooper* and his Wife.
Syd. 52. *Dacy* againſt *Clinch.*
Stile 150. *Raph* againſt *Davie.*
Cro. Ja. 443. *Brown* againſt *Low.*
3 *Bulſtr.* 249. *Lawknor* againſt *Godman.*
Palmer 263. *Harvey* againſt *Chamberlaine. Cro. Jac.* 635. S. C.
Cro. Eliz. 343. *Brent* againſt *Ingram.*
Stile 46. *Perſon* againſt *Dawſon.*
Cro. Ja. 107. *Wiſeman* againſt *Wiſeman.*
Godb. 391. *Symm's* Caſe.
1 *Roll's Abr.* 75. *pl.* 5.
Aiſh and *Geriſh. M.* 8 *Car.* B. R.
1 *Roll's Abr. fol.* 80. *pl.* 10.
Cro. Car. 318. *Green* againſt *Lincoln.*
1 *Jones* 326. S. C.

1 *Roll's Abr.* 47. *pl.* 6.

Cro. Eliz. 496. *Johnes* againſt *Davers.*

1 *Roll's Ab.* 74. *pl.* 1.

Hill. 9 *Car. B. R. Nicholls* and *Brampton* and his Wife. 1 *Roll's Abr. fol.* 82. *pl.* 15.

Trin. 11 *Jac.* 1. *B. R. Ireland* and *Gardner.* 1 *Roll's Abr. fol.* 82. *pl.* 16.

21 *Jac. B. R. Foxcroſt* and *Lacy. Hob.* 89.

1 *Roll's Abr.* 72. *pl.* 5. 75. *pl.* 4.

Cro. Jac. 557. *Fleetwood* againſt *Curle.*

Hob. 267. *S. C.*

Palm. 69. *S. C.*

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Godb. 341. *Wheeler* and *Appleton's* Caſe.

1 *Roll's Abr.* 57. *pl.* 36.

6 *Mod.* 104. *Graves* and *Blanchett.*

2 *Shower* 59. *Osbourne* and *Rey.*

2 *Shower* 153. *Anonymous.*

Fifthly, *The Words muſt be ſenſible and plain, or capable of being made ſo with a proper Averment, and muſt be ſpoken in the Hearing of ſome Body, and in a Tongue, that ſome of the Hearers do, or may underſtand.*

1. Where the Words were, *Thy Brother was whipped about* Taunton Croſs *for ſtealing Sheep, or burned in the Hand or Shoulder*; theſe Words were adjudged uncertain, and not actionable. 3 *Cro.* 283.

2. In the Caſe of *Bonfield* v. *Linton*, The Words were, *He is as very a Rogue as ever went upon the Highway, he killed a Man on board a Ship, and if he had not bought it off with a Piece of Money, he had ſuffer'd for it*; it was moved, that this ſhall not be intended a felonious killing; but adjudged, that as the Jury have given a Verdict, it muſt be intended a felonious Killing was meant by the Words, *that he would have ſuffer'd for it.* 2 *Show.* 77. *Caſe* 61.

3. Where Words are ſpoken in a Language that the People do not underſtand, they are not actionable. *Cro. Eliz.* 496. *Johnes* v. *Davers*; and if they are not ſpoken in *Engliſh*, it muſt be averr'd that they were underſtood by the Hearers. 1 *Cro.* 865.

4. Where the Words were, *Thou art a main-ſworn Lad*, they were held actionable, becauſe at the Place where they were ſpoken they were well underſtood to ſignify, that the Perſon of whom they were ſpoken was perjur'd. *Slater* v. *Franks. Hob.* 126. 1 *Brownl.* 9. 2 *Cro.* 6. 3 *Cro.* 417.

5. Where the Matter of Slander was for calling a Man *Idoner*, which in *Welſh* ſignifies, that the Perſon was perjur'd, was adjudged actionable, tho' there was no Averment, what was the Import of the Word; but it was ſaid that it was ſpoken in the Preſence of ſeveral Perſons that underſtood *Welſh*, and therefore the Slander was well enough laid. *Hob.* 126. *Anonymous.*

6. And in the ſame Caſe it was ſaid, that in the Caſe of one *Tuck*, it was adjudged actionable, where a Man called another *a Healer of Felons*, without any Averment how the Words were underſtood, becauſe the Court was informed, that in the Place where the Words were ſpoken, it was well underſtood thereby, that the Party of whom they were ſpoken was a Concealer of Felons.

7. So where the Words were, Coles *hath ſtrained a Mare*, Innuendo *that he had bugger'd her*, they were adjudged actionable after a Verdict, for the Verdict ſhall be intended to have found that to be the Meaning of the Words in the Place where they were ſpoken. *Cro.* 250. *Coles* v. *Haveland.*

An Averment likewiſe is neceſſary where Words are uncertain in their Signification, or not well known to the Judges to be Words of Slander.

1. This Averment is neceſſary to make Words actionable, by reaſon of their being underſtood, in the Place where they were ſpoken, to be tantamount to Words that are actionable, which otherwiſe would not be ſo; as theſe Words following, ſpoken of a Merchant, being averr'd, that in *London* they bear the ſame Senſe, as to call a Man a *Bankrupt*, were adjudged actionable, *Thou art a baſe Knave, a cheating Knave, thou haſt cozened me of* 400 l. *thou art a beggarly Knave, and I will make thee fly* England. 1 *Roll's Abr.* 86. *pl.* 2.

2. Yet in the Caſe of *Moon* and *Axe*, 1 *Roll's Abr.* 86. *pl.* 3. reported in *March* 15. by the Name of *Mead* and *Axe*, theſe Words were ſpoken of a Dyer, *Thou art not worth a Groat*; and tho' it was averr'd, that in *Exeter*, where theſe Words were ſpoken, it is tantamount, as if he had ſaid, *Thou art a Bankrupt*; the Court held the Words not actionable, and that as they had a plain and intelligent Senſe and Meaning to every Man, the *Averment* was idle and to no purpoſe, and ſhall not enforce the Words contrary to their known Senſe.

3. But theſe Words ſpoken of a Shoemaker, *It is no matter who hath him, for I warrant whoſoever hath him, he will cut him out of Doors*, with an Averment, that where they were ſpoken, they amounted to as much as if he had ſaid, *he would undo his Maſter*, were adjudged actionable. *Ellis* v. *Hunt*. 1 *Roll's Abr.* 86. *pl.* 4. *March* 1, 2.

4. If an Action is brought for Slander according to the Phraſe of the Country, in that Caſe there needs no Averment that they bear ſuch Signification; for the Judges are intended to know the Phraſe of Speech of every Country; as to ſay, *Thou art a Healer of Felons* is actionable in the Weſt of *England*. *Hob.* 126. So to ſay, *Thou art an Out-putter*, was held actionable in *Weſtmoreland*. 2 *Bulſt.* 146.

2 *Bulſt.* 145, 146. *Steeneman* againſt *Richardſon.*
Palm. 441. *Daubny* and *Martin.*
Dal. 97.
Cro. Eliz. 250. *Coles* againſt *Haveland.*
Moor 418, 419. *Hilliard* againſt *Conſtable.*
Hob. fol. 126. *Slater* againſt *Franks.*
Yelv. 153. *Weblin* againſt *Mayer.*
Noy 133 *Pridam* againſt *Tucker.*
Palm. 65. *Mich.* 17 *Jac. B. R.*
Yelv. 153. *Pridham* v. *Tucker.*
1 *Roll's Abr.* 61. *pl.* 13.
Paſch. 15 *Car. B. R. Moon* and *Axe*, 1 *Roll's Abr.* 86. *pl.* 3.
Raym. 184. *Drake* againſt *Hill.*
Paſch. 15 *Car. B. R. Ellis* and *Hunt*, 1 *Roll's Abr. fol.* 86. *pl.* 4.
1 *Roll's Abr.* 60. *pl.* 8.
Trin. 43 *Eliz.* 3024. *William Verch Howell* and *Evan George*, 1 *Roll's Abr. fol.* 86. *pl.* 5.
Stile 263. *Roſs* againſt *Lawrence.*
Hob. 191. *Gibs* againſt *Jenkins*, *Hetl.* 175.
Hutt. 8. *Gibbs againſt Davie.*

Subſequent Words ſhall ſometimes be explanatory in Mitigation, and ſometimes in Aggravation of the Former.

1. As if one Man ſays to another, *Thou art a Thief, for thou took'ſt my Beaſts by reaſon of an Execution, and I will hang thee*, theſe Words are not actionable, becauſe it plainly appears that the Theft he meant was the Taking of his Goods by the Execution. *Mich.* 7 *Jac. Wilk's* Caſe. *Hob.* 77. 1 *Roll's Abr.* 51. *Letter* R. *pl.* 2.

2. So to ſay, *Thou haſt raviſhed a Woman twice, and I will make thee ſtand in a white Sheet for it*; theſe Words are not actionable, becauſe it is plain, the Defendant did not mean ſuch a Raviſhment as is indictable as ſuch. *Godb.* 287. *Cro. Jac.* 666.

3. So for a Man to ſay, *I have Felony to lay to thy Charge, for thou would; have robbed me*; as Words of a Man's Intention to rob another are not actionable, unleſs ſome overt Act is publiſhed to have been done, as a lying in Wait for that Purpoſe; ſo the Felony here meant, was only the Opinion the Speaker of the Words had, that the Plaintiff had ſuch an Intention, and therefore not actionable. *Cro. Eliz.* 250.

4. Yet ſometimes the ſubſequent Words are explanatory in Aggravation; as for Example; tho' the Word *Whore* ſpoken out of the City of *London* hath been held not to be actionable; yet to ſay, *you are a Whore, and I can have a better Whore than you for a Groat, and you get your Living by your Tail*, hath been adjudged actionable, becauſe it implies a continued Courſe of Fornication and Adultery. *Gardiner and his Wife* againſt *Parke*, *Hard.* 107.

5. Where ſubſequent Words have been held to enlarge the Slander in the Words precedent; *vide Yelv.* 154. *Newlyn* v. *Faſſett*, and there is a Diverſity there taken, where Words are utter'd *continua voce*, and where they are ſpoken at ſeveral Times, and upon ſeveral Occaſions; as to ſay, *Thou art a Felon, for that thou ſtoleſt my Apples off my Trees*, are not actionable, by reaſon of their being ſpoken at one and the ſame Inſtant; for there the ſubſequent Words Qualifie and leſſen the Force of the Former; but if a Man calls another a *Thief*, and a Stander-by ſays, *beware what you ſay*, and the other ſaith, *I will juſtifie he is a Thief, for he ſtole my Evidence*, this is but *Inepta ratio* of the firſt Words, and voluntarily proceeding from the Party, and therefore they came too late to qualifie the former Words. *Ibidem.*

6. And it is ſaid in the Caſe of *Whitacre* v. *Hillidell*, reported in *Allen* 7. that where the Words are a plain and direct Slander, the ſubſequent Words, that ought to take off the Force of the Former, ought to carry in them a ſtrong Intendment, that they were ſpoken in a Senſe not actionable; for it is very unreaſonable that one ſhould ſlander another in general Words, and then mitigate them by Words of a doubtful Interpretation.

Other Caſes applicable to this Head, ſee

Mich. 4 *Jac. B. R. Minors* and *Lydford.* 1 *Roll's Abr.* 51. *L. R. pl.* 1.

Hob. Rep. 106. *Cro. Jac.* 114.

Hob. 77. *Adrian Cootte* againſt *Adrian Gilbert.*

1 *Brownl.* 2. *Male* againſt *Ket.*

Cro. Jac. 144. *Taylor* againſt *Perkins.*

All. 11. *Whitacre* againſt *Hillidell.*

Noy 135. *Ayres* againſt *Oſwall.*

2 *Brownlow* 280. *Fleming* againſt *Jales.*

2 *Bulſt.* 141, 142. *Painter* againſt *Warn.*

Cro. Jac. 231. *Gyer* againſt *Ormſted.*

Goulſ. 56. *Norman*'s Caſe.

Stile 115. *Wainewright* againſt *Whitly.*

Cro. Jac. 65, 66. *Robins* againſt *Hildredon.*

1 *Yelv.* 34. *Lewis* againſt *Acton.*

Cro. Jac. 204, 5. *Powell* againſt *Hutchins.*

Hut. 113 *Harbert* againſt *Angell.*

All. 31. *Dutton* againſt *Eaton.*

2 *Roll's Rep.* 380. *Ayrye* v. *Higgens.*

Winch 4. *Godard* againſt *Gilbert.*

1 *Roll's Abr.* 52. *pl.* 6.

Cro. Jac. 114. *Minors* againſt *Leeford.*

Godb. 287. *Bridges* and *Milles.*

Cro. Ja. 666. *Ridges* againſt *Milles.*

Cro. Eliz. 250. *Stoner* againſt *Audley.*

Mich. 9 *Car. B. R. Redhead* and *Smith.*

1 *Roll's Abr.* 47. *pl.* 7 *Hard.* 7.

Mich. 23 *Car. B. R. Yerworth* and *Pearce.*

1 *Roll's Abr.* 70. *pl.* 49.

Moor 396. *Caſtleman* againſt *Hobbs.*

Owen 57. *S. C.*

Hob. 331. *Cleark* againſt *Gilbert.*

1 *Jon.* 11. *Goddard* againſt *Gilbert.*

Popham 152. *Gilbert* againſt *Hopton*'s Caſe.

2 *Jac. B. R. Kelham* and *Mandi.*

Cro. Jac. 39. *Kellam* againſt *Manesby.*

Cro. Jac. 673, 674. *Smith* and *Ward.*

Stile 231. *Gibbs* againſt *Price.*
Stile 66. *Carver* againſt *Pierce.*
Cro. Jac. 687, 688. *Foſter* and *Browing.*
3 *Bulſt.* 265, 266. *Froſt* and *Ayre's* Caſe.
Raymond 12. *Rawlins* againſt *Hill.*
March 58. *Anonymous.*
Cro. 33 *King* againſt *Bag.*
2 *Cro.* 536. *Gainford* and *Tuke's* Caſe.

And in ſome Caſes Words ſhall have a favourable Conſtruction.

1. Where Words are dubious, and may receive a double Interpretation, the one Way, that they ſhall be actionable, and the other Way not, they ſhall be taken *in mitiori ſenſu*, ſo that they ſhall not be actionable. *Mich.* 15 *Jac. B. R. Gardener* and *Spurdance's* Caſe, *Cro. Jac.* 438.

2. But where the Words are not doubtful, nor cannot in the common Acceptance of them receive a double Conſtruſtion, there they ſhall be taken according to the common Acceptance; and ſo, if in common Acceptance they ſound in Slander, they ſhall be actionable, but ſhall not be ſtrained to any foreign Conſtruction to make them ſo, 3 *Lev.* 166. the ſame Caſe, in *Skinner* 153. *Naden* and *Miecock.*

What other Words reported in the Books fall under this Head, ſee the following Caſes.

Cro. Eliz. 400. *Meggs* and *Griffith.*
Goulſ. 138. the ſame Caſe.
Moor 408. *pl.* 552. the ſame Caſe.
1 *Roll's Abr.* 72. *pl.* 4. *fol.* 73, 74.
Cro. Eliz. 569. *Webb* againſt *Poor.*
Noy 64. *Thimblethorp's* Caſe.
Godb. 181. *Carle's* Caſe.
Cro. Jac. 306. *Tooſe and his Wife,* againſt St.———
Cro. Jac. 423. *Cooper* and *Smith.*
Cro. Eliz. 823. *Talbot* v. *Caſe.*
Cro. Car. 489. *Wilner* and *Hold.*
Moor 428. *Nicholas* and *Badger.*
Owen 33. *Winter* and *Barnham.*
Moor 29 *Anonymous.*
Mich. 11 *Jac. B. R. Foxcroft* and *Lacy.*
Hob. 89. *Bayle* againſt *Gird.*
Stile 245. *Davis* and *Ockham.*
Paſch. 5 *Jac. B. R.* Dame *Moriſon* and *Cade,* 2 *Cro.* 162.
Paſch. 7 *Jac. B. Parram* and *Roe.* 1 *Roll's Abr.* 72. *pl.* 8.
Paſch. 8 *Jac. B. Ward* and *Pool,* *Godb.* 167.
Godb. 375. *Mill's Caſe.*
2 *Roll. Rep.* 104. *Kamelford* and *Tuke.*
Cro. Eliz 629. *Blake* againſt *Stapley.*
Godb. 391. *Symm's* Caſe.
2 *Ven.* 172. *Anonymous.*
3 *Lev.* 166. *Walter* and *Beaver.*
Hill. 17 *Jac. B. R. Searl* and *Maunder.* 2 *Roll's* 141.
Hut. 16. *Drury* and *Fitch.*
Hob. 219. the ſame Caſe.
Poph. 150. *Searle* and *Maunder,* 2 *Roll's Rep.* 141.
Trin. 21 *Jac. B. R. Wheeler* and *Popleſton,* 1 *Roll's Abr.* 72. *pl.* 11.
Godb. 339. the ſame Caſe by the Name of *Wheeler* v. *Appleton.*
2 *Roll's Rep.* 342. the ſame Caſe by the ſame Name.
Poph. 187. *Reynor* and *Hallet.*
38. *Eliz. B. R. Denyſon* and *Burgh.*
Cro. Eliz. 475. the ſame Caſe in *Gould.* 143. by the Name of *Brough* v. *Denniſon.*
Cro. Eliz. 783. *Heath* v. *Poole.*
1 *Bulſt.* 112. *Stowe* and *Holland.*
Cro. Eliz. 224. the Lady *Ratcliffe* againſt *Shubley.*
2 *Cro.* 413. *Lewis* and *Walter's* Caſe.
Paſch. 38 *Eliz. B. R. Browne* and *Brinly.* 1 *Roll's Abr.* 73. *pl.* 13.
Moor 407. *pl.* 547. *Browne* and *Bruckley.*
Owen 58. the ſame Caſe.
Moor 409. *pl.* 556. *Carter's* Caſe.
Owen 56. the ſame Caſe.
Cro. Eliz. 424. *Charter* and *Hunter.*
Hut. 14. ——the ſame Caſe.
Mich. 17 *Jac. B. Bradſhaw* and *Walker.* 1 *Roll's Abr.* 73. *pl.* 15.
Hob. 249. the ſame Caſe.
Palm. 29. the ſame Caſe.
1 *Brownl.* 13. the ſame Caſe.
Hut. 34. the ſame Caſe.
Hill. 8 *Car. B. R. Langley* and *Bradſhaw,* 1 *Roll's Abr.* 73. *pl.* 16.

Trin. 16 *Car. B. R. Blumly* and *Roſe.*

Hut. 72. *Potter* againſt *Browne.*

In Anonymous 113. *Harbert* v. *Angell.*

Winch 70, 89.

1 *Syd.* 35. *Lizard* and *Clare.*

Godb. 89. *Eglinton* and *Aunſell's* Caſe.

Cro. Eliz. 192. Sir *William Walgrave* againſt *Agas.* 1 *Leon.* 335.

Noy 47. *Hall* and *Hemiſley.*

Stile 115. *Wainwright* and *Whitley.*

Co. 4. 20.

Yelv. 21. *Barham* and *Netherſale.*

Noy 155. *Bareham* and *Netherſale.*

Cro. Eliz. 834. *Lovet* againſt *Hawthorn.*

Mich. 15 *Car. B. R. Haſel* and *Auman.* 1 *Roll's Abr.* 75. *pl.* 20.

Yelv. 136. *Dromant* and *Weſtofer.*

Godb. 287. *Bridges and Mill's* Caſe.

Stile 22, 23. *Hamond* and *Kingſmill.*

Hill. 2 *Car. B. R. Wood* and *Merrick.*

Noy 124. *Bayly* and *Child.*

Hob. 305, 326. *Poland* and *Maſon.* 331. *Clarke* v. *Gilbert.*

1 *Brownl.* 18. *Gowland* and *Maſon.*

Hut. 38 *Maſon* and *Thompſon.*

Mich. 8 *Car. B. R. Lawrence* and *Woodward. Cro. Ja.* 277.

10 *Jac. B. R. Leveſton* and *Cawdry. Cro. Car.* 277.

Cro. Eliz. 351. *Lyne* and *Backhouſe.*

1 *Jon.* 302. *Smith* and *Hogſhead.*

1 *Bulſt.* 112. *Stowe* and *Holland.*

Cro. Jac. 315 *Holland* and *Stoner.*

Godb. 181. *Clarke*'s Caſe.

Yelv. 145. *Gold* and *Robins.*

Cro. Eliz. 890. *Latham* and *Humphrey. Hill.* 44. *Eliz. rot.* 350.

Cro. Jac. 312. *Lewis* and *Cawardley.*

Godb. 202. *Anonymus.*

Skynner 364. *Somers* and *Houſe.*

2 *Bulſt.* 216. *Charles Crook* againſt *Avery.*

Gouldſ. 48. *Anonymous.*

Godb. 89. *Mich.* 28, 29 *Eliz. K. B.*

1 *Roll's Rep.* 427. Sir *John Sidnam* v. *Mayo.*

3 *Bulſt.* 260. the ſame Caſe.

Paſch. 30 *Eliz. Prouſe* and *Cary. Cro. Eliz.* 43.

1 *Leon.* 101. the ſame Caſe.

Trin. 33 *Eliz. Gaſtrel* and *Townſend. Cro. Eliz.* 239.

2 *Bulſt.* 10. *Miller againſt Buckdon.*

Dal. 89. *Anonymous.*

Cro. Car. 489. *Wilner* againſt *Hold.*

2 *Syd.* 71. *Skelton* againſt *Earth.*

1 *Bulſt.* 109. *Tabbe* againſt *Matthew.*

Cro. Eliz. 251. *Stapleton* and *Frier.*

Cro. Eliz. 746. *Ball* againſt *Bridges.*

Cro. Eliz. 297. *Butler* againſt *Paynter.*

Godb. 89, & 90. *Mich. Cro. Eliz.* 52. *Morgan* and *Kiffe.*

4 *Cro.* 13. *A.*

Cro. Jac. 268. *Thomas Rich* againſt *Holt.*

Cro. Jac. 629. *Bennet* againſt *Tabram.*

Palm. 278. *Bennet*'s Caſe.

Cro. Jac. 58. Sir *John Hollis* againſt *Briſcow* and his Wife.

Yelv. 64. Sir *John Hollis* v.—

Trin. 15 *Jac. Gibbs* and *Jenkins. Hob.* 191. *Noy* 19. *Hetl.* 175.

Palm. 64. *Johnſon* v. *Leman.*

Hut. 8. *Gibbs* againſt *Davie.*

2 *Roll's* 136. *Clarke*'s Caſe. v. *Dorcheſter.*

Dal. 9, 10. *Anonymous.*

All. 37. *Eels* v. *Smith.*

Winch 40. Auditor *Curle*'s Caſe.

Mich. 13 *Car.* 2. *Lewes* and *Roberts. Hard.* 203.

Raym. 33. *Tibbs* againſt *Smith.*

1 *Ven.* 3. *Twiſtleton* v. *Hobs.*

Paſch. 23 *Car.* 2. *Philips* and *Kingſton.* 1 *Vent.* 117.

3 *Bulſt.* 249. *Lewkner* and *Godman*'s Caſe.

In ſome Caſes the Action will lie, notwithſtanding there is a Repugnancy, either in the Words themſelves, or made ſo by Matter apparent in the Record.

1. As if one ſays of a Widow having Children born in Wedlock, *that ſhe is a Whore, and her Children are Baſtards*, by which ſhe loſt her

Marriage with *J. N.* now tho' the Children born in Wedlock cannot properly be Baſtards, yet they may be reputed ſo; and the Action will lie. *Cro. Car.* 322. *Bryan* and *Cockman.*

2. *Thou waſt forſworn in Carpenters-Hall, and didſt rob the Hall,* theſe Words are actionable; tho' properly ſpeaking the Hall cannot be robb'd. *Cro. Eliz.* 788.

3. But if one ſays to another, *Thou haſt murder'd* J. S. and it appears that *J. S.* is alive, no Action will lie. *Hill.* 11 *Jac.* *Pett's* Caſe, *Jones* 141. *Popham* 187. 4 *Co.* 16. *a.* 3 *Bulſt.* 167. *Litt.* 310.

4. Yet ſee the Caſe of *Smith* and *Williams,* where one ſaid of another, *he is a Rogue, and robb'd the* Hockley *Butcher;* and it was not averr'd that there was an *Hockley* Butcher. But ſays the Lord Ch. Juſt. *Holt,* then the Fault is the greater, and 'tis a double Crime. *Comb.* 247.

5. Where Words were ſpoken by a Feme Covert, and ſhe ſaid of the Plaintiff theſe Words, *Thou haſt ſtolen my Faggots (meaning the Faggots of the Defendant)* tho' it was objected that it was repugnant, and that the Defendant as a Feme Covert could not have any Faggots, yet the Action was held to lie. *Palmer* 358. *Strong and his Wife* againſt *White and his Wife.*

Cro. Jac. 101, 102. *Turnor* againſt Sir *Edward Darcie.*
1 *Roll's Rep.* 286. *White* againſt *Brough.*
Latch 219. *Priour* againſt *Colbold.*
1 *Roll's Abr.* 78. *pl.* 2.
1 *Jon.* 141. *Keymer* againſt *Hallet.*
Poph. 187. reported by the Name of *Reynor* againſt *Hallet.*
Latch 159. *Keymer* againſt *Clark-vel Hally,*
Stile 424, 425. *Stevens* againſt *Ask.*
Cro. Jac. 323. *Matthew* againſt *Craſs.*
Winch 39, 40. Auditor *Curle's* Caſe.
Palm. 441. *Daubny* againſt *Martin.*

Sixthly, *The Matter contained in the Meaning of the Words muſt be falſe, and ſpoken malitiouſly on purpoſe to ſlander, and the Thing charged muſt be poſſible.*

1. And therefore if the Matter be true, the Defendant may juſtify the Speaking of the Words; but if after the Fact committed there was a Pardon, the Words are actionable ſtill. 1 *Roll's Abr.* 88. *pl.* 6. *Moor* 863. *pl.* 1187.

2. If *B.* ſays, that *J. S.* ſaid, that *J. D.* ſaid a certain ſcandalous Thing that will bear an Action, tho' this be falſe; yet if *J.* ſaid, that *J. D.* ſaid the Words, no Action lies againſt *B.* for he has nam'd his Author, *(viz.) J. S.* 1 *Roll's Abr.* 64. *pl.* 3.

3. But where a Man ſays, *a Woman told me that ſhe heard one ſay that* Meggs's *Wife had poiſon'd* Griffin *her firſt Husband in a Meſs of Milk;* theſe Words were adjudged actionable. 1 *Roll's Abr.* 64. *pl.* 4.

4. Where the Defendant ſaid of the Plaintiff, *I have heard the Plaintiff was hanged for ſtealing an Horſe,* and upon Evidence it appear'd, the Words were ſpoken in Grief and Sorrow for the News, and *Hob.* directed the Plaintiff to be nonſuited. 1 *Lev.* 82.

5. If one ſays of another, *that he is a Witch,* no Action lies, they being but Words of Paſſion. 1 *Roll's Abr. fol.* 45. *pl.* 15.

6. But if one ſays to another, *Thou art a Witch, and an Inchanter, and thou didſt bewitch the Children of* J. S. *and they are waſted and deſtroyed;* an Action will lie, for he ſhews his Intention to be that he is a Witch, and hath been guilty of doing an Injury to a Perſon. 1 *Roll's Abr. fol.* 45. *pl.* 18. 1 *Brownl.* 2. *Stone* v. *Roberts, Godb.* 341. *Noy* 22. *Hutton* 13. *Moo.* 906. 2 *Leon.* 30. 4. *Leon.* 92.

7. Where the Words were, *It is no Marvel ſhe comes not to Church, for it is thought ſhe is with Child, and I fear it is too true;* theſe Words were

held not to be malitious Words, tho' the Declaration ſet forth, that the Plaintiff loſt her Marriage. *Yelv.* 113. *Brinsby* v. *Balgy.*

8. Where a Man came to a Juſtice of Peace, for a Warrant againſt the Plaintiff, and then ſaid, *Sir, I will charge him with flat Felony, for ſtealing my Ropes from my Shop*; and it was reſolved, that as theſe Words were ſpoken to a Juſtice of Peace, when the Defendant came for a Warrant, which was lawful, no Action would lie. *Ram* v. *Lamley*, *Hutton* 113.

Note; By the Statute of *Limitations* of the 21 *Jac.* 1. *cap.* 16. This Action for Words muſt be commenced within *two Years* after the Words ſpoken.

And by the ſame Statute, in Actions of *Slander*, if the Jury find, or aſſeſs the Damages under 40 *s.* the Plaintiff ſhall recover no more Coſts than *Damages*.

There is another Species of this Action, which not being treated of by my Lord Rolls, *or Mr.* Danvers, *in either of their Abridgments, I beg Leave to quote a few Caſes incident thereto.*

1. A Libel is the ſtrongeſt and greateſt Degree of Scandal, and does not die like Words which may be forgot, but *Litera Scripta manet*; and therefore a greater Degree of Latitude is beſtowed, not only in conſtruing it Criminal, but in the Extenſiveneſs of the Action; for an Action for Words is confin'd to the Perſon of the offended, but the Cauſe of Action for Scandal in a Libel ſurvives. 5 *Co.* 125. 12 *Co.* 134.

2. And this Offence was puniſhable heretofore in the Star-Chamber, and is now indictable in the Court of King's Bench.

3. It may be by Writing or without Writing, (that is to ſay) by Pictures, wherein the Party is painted in any ignominious or reproachful Manner, or by Signs; as when one does affix a Gallows at the Door of the Party. 5 *Co.* 126. 1 *Cro.* 125. 2 *Brownlow* 152. *Popham* 139, 140. *Hob.* 153, 384, 837. *Hetly* 10.

4. And differs from ſcandalous Words in this Reſpect, if a Man repeats what a Man ſaid of another, tho' the Words are ſcandalous, yet no Action lies for that; but otherwiſe in the Caſe of a Libel, for malitiouſly repeating or ſinging the Words contained in a Libel in the Preſence of others, or delivering over a Copy thereof to another, to the Intent to ſcandalize the Party, an Action lies for it.

5. And in the Caſe of a Libel it matters not, whether the Words contained therein are true or falſe, or whether the Party upon whom the ſame is made be of good or ill Report, or whether it be divulged ſecretly or openly. *Hob.* 253. 5 *Rep.* 125.

6. And if one writes a Letter, containing ſcandalous Matter againſt another, and ſends it to a third Perſon, this may be a Libel, as is reported in the Caſe of *Peacock* v. *Reynall*, in 2 *Brownlow* 152.

7. Scandalous Matter is not abſolutely neceſſary to make a Libel; 'tis enough if the Defendant induces an ill Opinion to be had of the Plaintiff, or to make him contemptible and ridiculous; as for Inſtance, an Action was brought by the Huſband for riding Skimmington, and adjudged that the Action lay, becauſe it made him ridiculous, and expoſed him. 3 *Salk.* 226.

8. The Libel in the Information or Declaration muſt exactly agree with the Libel itſelf, for tho' Words are tranſient, and vaniſh in the Air as ſoon as ſpoken, and there can be no Tenor of them, therefore an Identity is not required; and tho' the Jury find ſome Omiſſions, it will be ſufficient if ſome be proved, and in ſuch Caſe the Plaintiff ſhall recover; but when a Thing is written, tho' every Omiſſion of a Letter may not make a Variance, yet if ſuch Omiſſion makes a Word of another Signification, it is fatal. 3 *Salk.* 225.

9. A Defamatory Writing expreſſing only one or two Letters of a Man's Name, if it be in ſuch a Manner that from what goes before, and follows after, it muſt be underſtood by the natural Conſtruction of the Whole, to ſignifie and point at ſuch a particular Perſon, it is as properly a Libel, as if the whole Name was expreſs'd at large. *Trin.* 12 *Annæ*, *Hawkins's Pleas of the Crown* 194.

10. *G.* forged an Order of Chancery, in which were ſeveral defamatory Expreſſions againſt the Plaintiff, and at the End draws a Pillory, and ſubſcribes it for Sir *J. H.* and his forſworn Witneſs by him ſuborn'd, the Court held that, tho' no Action lay for forging the Order, and entire Damages were given, yet that was only an Inducement, and an Action was held to lie for the Latter; and the Caſes there cited were, that to ſay a Man is a diſhoneſt Man is not actionable, but yet to publiſh it, or ſet it upon Poſts, will make it actionable. *Skinner* 124.

11. The Copying of a Libel is criminal, and writing a Copy without Authority, is writing a Libel. *Salk.* 417. He that writes the Libel is the Contriver, and having a written Copy of a known Libel is Evidence of Publication. *The King* v. *Bear.*

And as this is an Offence generally puniſhed by Information or Indictment, I omit treating any more on this Head.

Of ſlandering a Title.

1. Whoever will bring an Action for ſlandering a Title of Lands, it hath been ſaid, ought to ſhew that he hath a good Title. *Palm.* 530.

2. But ſee the Caſe of *Marvin* v. *Maynard*, in 1 *Cro.* 419. where it was held, that the Plaintiff having ſaid he was ſeiſed of the Manor of *Upton Gray*, that the Defendant, to ſlander his Title, ſpake theſe Words, Mr. *Marvin* (Innuendo *the Plaintiff*) *hath not any Title to* Upton; here it was ſaid to be ſufficient, tho' the Plaintiff does not ſhew what Eſtate he had.

3. In an Action for ſlandering a Title, *particular Damage* ought to be alledged; as that the Plaintiff might have ſold or let his Eſtate to ſome Perſon or other, who after ſpeaking ſuch Words deſiſted. *Palmer* 529. 3 *Cro.* 140. *Lawe* v. *Harwood.*

4. And where the Declaration was, that the Plaintiff had a Mind to convey Part of his Land for the Advancement of his Son, and to leaſe out another Part for Years, and the Defendant knowing of it, ſpoke theſe Words, Mr. *Swead hath no more Right to the Farm of* Colenorton *than a meer Stranger*, and avers, that a Stranger had not any Right, by which Words he was ſo endamaged, that he could not convey the Land for the Advancement of his Son; it was held that the Plaintiff had not any Cauſe of Action, for he did not ſay he was about to ſell his Land, nor did he ſhew any particular Damage, and his Intention ſet forth, as above, would not make it good. 1 *Roll's Rep.* 244. *Swead* v. *Badley.*

5. If the Defendant claim'd any Title himſelf in the ſame Lands, the Words are not actionable, as in the Caſe of *Lovett* and *Weller*, 1 *Roll's Rep.* 409. where theſe Words were ſpoken to *J. S.* having Communication of ſome Land then in the Plaintiff's Poſſeſſion, *take heed how you buy it, for it is mine, if every Man had his own, and I will ſpend* 20l. *but I will have it*, theſe Words in Arreſt of Judgment were held not actionable.

6. Where a Man is about to ſell his Land, and *J. S.* pretends to a Title therein, and ſhews a Leaſe for it, and it is a counterfeited one, which he knows to be ſo, the Words are then actionable. 4 *Co.* 18. 1 *Co.* 175.

7. If a Man ſlanders the Title of another Man, he cannot clear himſelf by a Pretence of a Title in himſelf, which he cannot maintain. But if he ſays himſelf at the ſame Time, that he himſelf hath a Title, no Action lies. *Palm.* 531.

8. Where a Man ſaid, *I would not wiſh any Man to deal with the Land, for I know one that hath a good Title to it, and the Parties will not part with their Intereſt*; and the Defendant juſtified, that he himſelf had a Leaſe in Reverſion of Parcel, and at Will in another Parcel; it was agreed by all the Judges, that if one ſaid, *he himſelf had a Title to another's Land*, the Action would not lie, altough he had no Title; but when he ſaid Words, purporting that another had a Title, whether he could apply it to himſelf by his Juſtification was a Queſtion; and *Popham* ſaid he could not, but *Gaudy* and *Fenner* to the Contrary. 1 *Cro.* 427.

For other Caſes applicable to this Species of Slander, ſee hereafter.

What other Words not herein before inſerted have been adjudged actionable, and what not, are to be found in the following Caſes.

Firſt, What Words have been held actionable.

Charging the Plaintiff with **Treaſon, Miſpriſion of Treaſon**, or **Want of Allegiance.**

1 *Keble* 14. *Green* v. *Green.*
112. *Dolbin* v. *White.*
469. *Booth* v. *Leach.*
814. *Edwards* v.——
2 *Keble* 47. *Brunt* v. *Spencer.*
478. *Hingſtone* v. *Peck.*
463. *Lowther* v. *Mowſon.*
1 *Cro.* 153. *Bellingham* v. *Minors.*
171. *Ward* v. *Thorne.*
251. *Stapleton* v. *Frier.*
191. *Waldgrave* v. *Agas.*
268. *Fowler* v. *Aſton.*
2 *Cro.* 275. *Beriſted* v. *Breſſe.*
406, 413. *Lewis* v.—1 *Roll's Rep.* 444. S. C. 3 *Bulſtr.* 225.
424. *Lewis* v. *Cooke.*
202. *Smith* v. *Turnor.*
Hard. 203. *Lewis* v. *Roberts.*
Allen 35. *Mark* v. *Cubit*
Hob. 180. *Sydenham* v. *May*, 2 *Cro.* 407. 1 *Roll's Rep.* 48, 49. 2 *Roll's* 17, 18. 1 *Roll's Rep.* 427.
Hutton 131. *Hutton* v. *Hanſon.*
2 *Lutt.* 1295. *Howe* v. *Perry.*
1 *Sid.* 103. *Booth* v. *Seale.*
381. *Dalton* v. *Sadd.*
Stile 400. *Trevilian* v. *Welman.*
435. *Lamplew* v. *Hewſon.*
Yelv. 107. *Blanchflower* v. *Atwood.*
Ray 20. *Auſten* v. *Mander.*
23. *Harris* v.——
Godbolt 153. *Anonymous.*
Hardr. 203. *Lewis* v. *Roberts.*
Modern Caſes in L. and Eq. } 283. *Fry* v. *Carne.*
1 *Sid.* 53.
131. *Hawk* v. *Rowe.*

With **Murder.**

1 *Cro.* 239. *Gaſtrell* v. *Townſend.*
308. *Preſton* v. *Pindar.*
317. *Godfrey* v. *Mour.*
352. *Wilmer* v. *Hold*, 3 *Cro.* 489.
672. *Slade* v. *Allen.*
823. *Talbott*'s Caſe.
191. *Tibbott* v. *Haynes.*
2 *Cro.* 56. Sir *John Harper* v. *Beaumond.*
306. *Tooſe*'s Caſe.
423. *Cooper* v. *Smith*, *Poph.* 128. *Bridg.* 60.
Moor 286. *Anonymous.*
Hardr. 203. *Lewis* v. *Roberts.*
3 *Cro.* 318. *Green* v. *Lincoln.*
Hetley 69 *Watſon* v. *Vanderlaſh.*
Popham 187. *Raynor* v. *Hallett.*
Stile 65. *Long*'s Caſe.
287. *Bernard* v. *Levitt.*
2 *Show.* 77. *Bondfield* v. *Linton.*
1 *Keb.* 253. *Weſt* v. *Phillips.*
35. *Brown* v. *Charlton.*
3 *Keb.* *Greene* v. *Warner.*
2 *Bulſt.* 42. *Billing* v. *Knight.*
Latch 159. *Keymer* v. *Clarke.*
3 *Lev.* 171. *Williams* v. *Lewis.*
T. Jones 211. *Nailer* v. *Clarke.*
Modern Caſes in Law and Equity, 24. *Button* v. *Heyward and his Wife.*

With **Poiſoning.**

1 *Cro.* 400. *Meggs* v. *Griffith.*
569. *Webb* v. *Poor.*

1 *Cro.* 747. *Paſſie* v. *Mondford.*
2 *Cro.* 438. *Gardner* v. *Spurdant and his Wife.*
343. *Jacob* v. *Mills.*

With Theft or Robbery.

Sibthorp's Caſe, *W. Jones* 366. 3 *Cro.* 417. S.C.
1 *Cro.* 214. *Lacy* v. *Reynolds.*
225. *Guildeſlew* v. *Ward.*
224. Lady *Ratcliff* v. *Shubley.*
289. *Graves's* Caſe.
239. *Johns* v. *Gittins.*
342. *Ball* v. *Roane.*
348. *Stich* v. *Wiſdom, Owen* 18. S. C. *Gould.* 186. S.C.
399. *Week*'s Caſe.
428. *Caſtleman* v. *Hobbs.*
471. *Anonymus.*
563. *Anonymus.*
618. *Theobald* v. *Brooke.*
710. *Leverſage* v. *Smith.*
786. *Royall* v. *Peckham.*
857. *Robins* v. *Franks*
861. *Taylor* v. *How.*
279. *Charnell*'s Caſe.
904. *Willymot* v. *Wotton.*
2 *Cro.* 43. *Gerrard* v. *Holland.*
114. *Minors* v. *Leeford.*
157. *Piers* v. *Gore.*
154. *Showell* v. *Hayman.*
214. *Frank* v. *Alſop.*
253. *Gyer* v. *Omſtead.*
247. *Herpnes* v. *Sprott.*
312. *Lewis* v. *Cawardley.*
315. *Holland* v. *Stoner.*
442. *Turnor* v. *Campion.*
600. *Stamp and his Wife,* v. *White and his Wife.*
673. *Smith* v. *Ward.*
3 *Cro.* 42. *Spencer* v. *Medburne and his Wife.*
52. *Powell* v. *Plunkett.*
140. *Lewknor* v. *Cruchley and his Wife,* 1 *Jones* 195.
268. *Halley* v. *Stanton, W. Jones* 299.
277. *Lawrence* v. *Woodward.*
572. *Brian* v. *Wikes.*
236. *Mott and his Wife* v. *Butler.*
Stile 135. *Gibbs* v. *Dunn.*
150. *Ralph* v. *Davie.*
159. *Gray* v. *Walye.*
213. *Edwards* v. *Fallowes.*
231. *Bynion* v. *Trotter.*
Stile 247. *Denton* v. *Caket.*
298. *Biſhop* v. *Fitzherbert.*
9. *Anonymus.*
66, 79. *Carver* v. *Peirce.*
115. *Wainwright* v. *Whitley.*
335. *Heard* v. *Read.*
59. *Nevil* v. *Mott.*
46. *Pearſon* v. *Dawſon.*
24. *Drake* v. *Whitacer.*
Moor 883. *Anonymus.*
401. *Bale* v *Rodes.*
418. *Thimblethorp*'s Caſe.
863, & 872. *Cuddington* v. *Wilkins, Ow.* 14. S. C. *Hob.* 67, & 81. S. C. 1 *Brownl.* 10. S. C.
409. *Weeks* v. *Taylor.*
1 *Roll's Rep.* 286. *White* v. *Brough.*
2 Part 91. *Brett* v. *Trevilian.*
165. *Mayott* v. *Gibbons.*
342. *Wheeler* v. *Appleton.*
380. *Ayrye* v. *Higgins.* S. C. reported in *W. Jones* 43. by the Name of *Aris* v. *Higgins.*
440. *Smith* v. *Shortred.*
3 *Leon.* 231. *Warner* v. *Cropwell,* cited in an *Anonymus* Caſe, *ibidem.*
4 *Leon.* 181. *Anonymus.*
1 *Bulſt.* 112. *Stow* v. *Holland.*
163. *Petty* v. *Waight.*
147. *Long* v. *Lorking.*
2 *Bulſt.* 134. *Bayly* v. *Maynard.*
141. *Painton* v. *Warne.*
145. *Steeneman* v. *Richardſon.*
227. *Gilpine* v. *Shrine.*
3 *Bulſt.* 303. *Parrett* v. *Parrett.*
249. *Leawknor* v. *Goodman.*
161. *Crofts* v. *Brown.*
83. *Holly* v. *Hendez.*
Winch 6. *Wetherley* v. *Wells.*
41. *Anonymus.*
102. *Crompton* v. *Philpot.*
Latch 47. *Adam*'s Caſe.
W. Jones 376. *Anonymus.*
March 19. *Anonymus.*
211. *Paulin* v. *Ford.*
Allen 31. *Tearworth* v. *Peirce.*
32. *Peirſon* v. *Dawſon.*
7. *Whitaker* v. *Hillidell.*
Het. 172. *Male* v. *Ket, Hob.* 184. *Moor* 883. *Poph.* 129.
1 *Keb.* 127. ——— v. *Wood.*
136. *Slebb* v. *Smith.*
691. *Gerrard* v. *Lyon.*
2 *Keb.* 440. *Hunt* v. *Merrichurch.*
496. *Croft* v. *Winter.*

Gouldsb. 76. *Smith* v. *Warner.*
130. *Parle*'s Caſe.
138. *Redfrin*'s Caſe.
3 *Cro.* 153. *Benſon* v. *Morley.*
166. *Loe* v. *Sanders.*
424. *Lloyd* v. *Pearſe.*
622. *Boſton* v. *Tatam.*
687. *Foſter* v. *Browning.*
39. *Kellam* v. *Mansbie.*
1 *Brownl.* 2. *Cowte* v. *Gilbert.*
Yelv. 49. *Charnell* v. *Hollands.*
136. *Dormant* v. *Weſtofor.*
145. *Gold* v. *Robins.*
152. *Higges* v. *Emſton.*
Hutton 113. *Ram* v. *Lamley.*
Godb. 241. *Colt* v. *Gilbert.*
2 *Lev.* 205. *Froud* v. *Froud.*
Raym. 33. *Tibbs* v. *Smith.*
Modern Caſes in Law and Equity 30. *Muck*'s Caſe.
Salk. 695. *Baker* v. *Peirce,* 6 *Mod.* 23.
Hob. 192. *Scarlet* v. *Stiles,* 1 *Bro.* 12. 294.
Popham 129. *May* v. *Kett.* 1 *Bro.* 2.
2 *Mod.* 52. *Cooper* v. *Hawkeſwell.*
3 *Mod.* 280. *Anonymous.*

With general **Felony.**

Popham 150. *Serle* v. *Mander,* 2 *Roll's Rep.* 141.
Godbolt 202. *Anonymus.*
1 *Keb.* 336. *Anonymus.*
345. *Crawford* v. *Dawſon.*
2 *Keb.* 289. *Linter* v. *Butler.*
2 *Roll's Rep.* 342. *Wheeler* v *Appleton.*
3 *Cro.* 276, 7. *Smith.* v. *Hodgeskins.*
307. *Blizard* v. *Barnes.*
572. *Bryan* v. *Wikes.*
1 *Vent.* 264. *Anonymus.*
1 *Bulſt.* 148. ———
Stile 235. *Paine* v. *Preſtney.*
Comb. 232. *Somers* v. *Howe, Skinner* 364. S. C.

With compounding or concealing **Murder, Felony,** or receiving of **ſtolen Goods.**

1 *Cro.* 536. *Moo.* 704. *Gouldsb.* 186. 877 *Cox.* v. *Humphrys.*
2 *And.* 47. ———
Godb. 157. *Brigg*'s Caſe.
Gouldsb. 132. *Laſſcells* v. *Laſſcells.*
Yelv. 154. *Newlin* v. *Faſſett.*
1 *Syd.* 413. *Gamble* v. *Dana.*
Stile 392. *Anonymus.*

Moor 686. Lord *Mordant Bridges.*
Allen 5. *Hinacre* v. *Lemon.*
2 *Cro.* 58. Sir *John Hollis* v. *Briſcoe.*
300. *Smith* v. *Flint.*
629. *Bennett* v. *Tabram,* Palm. 278.
3 *Cro.* 236. *Mott and his Wiſe* v. *Butler.*
1 *Bulſt.* 109. *Tabbe* v. *Matthew.*
148. Cited in the Caſe of *Beereford* v. *Preſſe.*
2 *Keb.* 494. *Gamble* v. *Jenney.*
1 *Vent.* 18. *Anonymus.*

Where an Intent only is charged.

Dyer 26. *Ruſſell*'s Caſe.
Cro. Eliz. 6. *Edwards*'s Caſe.
3 *Cro.* 140. *Lewkner* v. *Cruchley* and *his Wiſe.*
1 *Cro.* 191. *Tibbot* v. *Haynes.*
Yelv. 90, 58. Sir *John Harpur* v. *Beamont.*
Hob. 180. Sir *John Sydenham* v. *May.*
3 *Bulſt.* 167. *Crofts* v. *Brown*'s Caſe.
Hetley 18. *Alice Reading*'s Caſe.
2 *Syd.* 76. *Langley* v. *Clarke.*

Words charging the Plaintiff with **Perjury.**

Moor 182. *Anonymus.*
365. *Woodliffe* v. *Vaughan,* 1 *Cro.* 429.
404. *Noy* 34. 1 *Cro.* 492. *Wild* v. *Copeman.*
1 *Cro.* 185. *Plaice* v. *Howe.*
222. *Fermor* v. *Dorrington.*
293. *Nedham* v. *Corſellis.*
297 { *Green* v. *Dancy.* / *Lee* v. *Seacombe.*
906. *Dagg* v. *Penkeven.*
308. *Guerdon* v. *Winterflud.*
342. *Baxter* v. *Shade.*
343. *Brent* v. *Ingram.*
348. *Banks* v. *Stacy.*
572. *Bate* v. *Rookwood.*
583. *Harriſon*'s Caſe.
609. { *Shaw* v. *Thompſon.* / *Corbet* v. *Hill.*
709. *Spencer* v. *Shory.*
730. *Ireland* v. *Goodale.*
787. *Thaxbie* v. *Smith.*
899. *Clerke* v. *Penkeven.*
907. *Poultney* v. *Wilkinſon.*
234. Sir *Richard Snowde's* Caſe.
2 *Cro.* 190. *Skinner* v. *Trobe.*

2 *Cro.* 613. *Benſon and his Wife* v. *Hall and his Wife.*
204. *Colame*'s Caſe.
158. *Harris* v. *Dixon.*
107. *Wiſeman* v. *Wiſeman.*
102. *Turner* v. Sir *Ed. Darcie.*
436. *Page* v. *Keble.*
3 *Cro*, 337. *Anonymus.*
288. *Drake* v. *Corderoy. W. Jones* 307.
378. *Robodham* v. *Venleck.*
321. *Strowde* v.———
Owen 62. *Rayner* v. *Grimſton.*
1 *Leon.* 131. *Peirce* v. *Howe.*
1 *Leon.* 13. *Brook* v. *Dowley.*
101. *Browſe* v. *Cary.* 1 *Cro.* 93.
Latch 219. *Priour* v. *Colbold.*
W. Jones 352. *Golding* v. *Wennal.*
T. Jones 5. *Mayn* v. *Okey.*
Stile 6. *Hogg.* v. *Vaughan.*
17. *White*'s Caſe.
72. *Simmons* v. *Low.*
Stile 335. *Heard* v. *Read*'s Caſe.
452. *Trevanion* v. *Penhollow.*
Hutton 34. *Adavis* v. *Fleming.*
1 *Bulſt.* 40. *Smale* v. *Hammon.*
69. *Anonymus.*
Wi. 2, 3. *King* v. *Bower.*
3 *Bulſt.* 283. *Mefflyn* v. *Farneden.*
304. *Gilbert* v. *Rodde.*
72. *Baker*'s Caſe.
147. *Apthorpe* v. *Cockerell.*
Hob. 283. *Adams* v. *Flemings.*
Hetley 63. *Williams* v. *Bickerton.*
119. *Keene* v. *Cox.*
1 *Vent.* 263. *Jennings* v. *Hunking.*
1 *Keble* 302. *Orton* v. *Fuller.*
2 *Rolls Rep.* 471. *Tate*'s Caſe.
Godb. 444. *Jones* v. *Ballard.*
1 *Brownlow* 4. *Morton* v. *Leedale.*
2. *Bridges* v. *Playdell.*
2 *Showers* 33. *Goodwin* v *Browne.*
2 *Lutt.* 1292. *Stable* v. *Sayle.*
Allen 7. *Osborne* v. *Brooke.*
Hard. 151. *Brumrig* v. *Hanger.*
7. *Wall and his Wife* v. *Norton and his Wife.*

With Forgery.

1 *Cro.* 72. *Topliffe* v. *Wilſon.*
178. *Sale* v. *Marſh.*
296. *Munday* v. *Cordall.*
328. *Brooke* v. *Clarke.*
554. *Auſtie* v. *Maſon.*
607. *Wade* v. *Buſſard.*
883. *Chickeley* v. *Barker.*

2 *Cro.* 648. *Stone* v. *Smdlcomb*'s Caſe.
3 *Cro.* 326. *Baal* v. *Baggerley, W. Jones* 325. S. C.
140. *Lewknor.* v. *Crutchley & Ux.*
337. *Anonymus.*
509. *Ceely* v. *Hoskins.*
Owen 47. *Moſe* v. *Read*'s Caſe.
Yelv. 146. *Witſher*'s Caſe.
Popham 177. *Dabborn* v. *Martin.*
2 *Bulſt.* 132. Sir *George Reynell* v. *Sackfield.*
1 *Keb.* 273. *Metley* v. *Slaney.*
2 *Roll's Rep.* 266. *Stone*'s Caſe.
410. *Pole* v. *Carret.*
Raymond 4. *Reynolds* v. *Burton.*
17. *Nuttall* v. *Page.*
1 *Syd.* 16. *Caſſabilly* v. *Britt.*
1 *Lev.* 112. *Mills* v. *Monday, & ux.*
1 *Vent.* 149. *Dorrell* v. *Jay.*
Ley 70. *Roberts* v. *Lord.*

Words charging the Plaintiff with Sodomy or Beſtiality.

1 *Cro.* 250. *Coles* v. *Haveland.*
1 *Vent.* 276. *Anonymus.*
2 *Keb.* 377. *Colliar* v. *Burrell.*
3 *Keb.* 546. *Snell* v. *Webberly,* 2 *Lev.* 150.
1 *Syd.* 373. *Collier* v. *Burrell.*
220. *Poturite* v. *Barrell.*
Allen 61. *Chappell* v. *Goodhouſe.*

With Witchcraft.

Moore 868. *Marſhal* v. *Steward.*
1 *Cro.* 312. *Forteſcue* v. *Hext.*
571. *Rogers* v. *Gravat.*
2 *Cro.* 150. *Edwards* v. *Ouſley.*
639. *Hunn and his Wife* v. *Porter.*
3 *Cro.* 261. *Hix* v. *Hollinſhed.*
512. *Smith* v. *Cooker.*
3 *Cro.* 474. *Ceely* v. *Hopkins and his Wife.*
W. Jones 397. S. C. 3 *Cro.* 480. S. C.
1 *Keb.* 140. *Dacy* v. *Linch. Ray* 35. S. C. 1 *Syd.* 52. by the Name of *Dacy* v. *Clinch.*
1 *Roll. Rep.* 255. *Loais* v. *Cook.*
Allen 2. *Markham* v. *Adamſon.*
37. *Tates* v. *Lindall.*
Stile 59. *Sawyer* v. *Ruſſell.*
1 *Lev.* 255. *Shagter and his Wife* v. *Davies.*

1 *Syd.* 386. S.C.
3 *Lev.* 394. *Stephens* v. *Corben.*
Godb. 341. *Shoetor* v. *Emet and his Wife.*
1 *Syd.* 424. *Semor* v. *Moor.* 1 *Lev.* 276. 13 *Rep.* 59. *Yelv.* 150. 2 *Keb.* 548. 1 *Roll's* 45.
Comber. 246. *Stephens* v. *Corbin.*
Hutt. 13. *Stone* v. *Roberts.*
Yelv. 150. *Anonymus.*

With clipping or coining of **Money.**

1 *Cro.* 629. *Blake* v. *Stanley.*
2 *Cro.* 536. *Gainford* v. *Tuke.*
2 *Roll. Rep.* 104. *Kamelford* v. *Tuke*; this is the ſame Caſe with the Former, but only is miſcalled in *Cro.*
Palmer 68. *Brown* v. *Audley.*
3 *Lev.* 166. *Walter* v. *Beaver.* *T. Jones* 235. S.C.
T. Jones 235. *Moydon* v. *Mycock.*
Skinner 183. *Naben* v. *Miecock.*
Salk. 697. *Speed* v. *Perry.*
Godb. 375. *Mills*'s Caſe.

With **Deceipt.**

2 *Cro.* 504. *Blunden* v. *Euſtace.*
557. *Fleetwood* v. *Curle.* *Palmer* 69.
3 *Cro.* 480. *Seaman* v. *Bigg.*
155. *Wicks* v. *Shepheard.*
Stile 388. *Towenſend* v. *Barker's* Caſe.
Gouldſb. 278.
March 82. Sir *Richard Greenfield*'s Caſe.
116. *Baines*'s Caſe.
1. *Anonymus.*
2 *Roll. Rep.* 72. *London* v. *Eaſtgate.*
Latch 188. *Dean* v. *Steel.*
W. Jones 395. *Samn* v. *Bigg*; this is the ſame Caſe as above, reported in 3 *Croke* 480. by the Name *of Seaman* v. *Bigg.*
2 *Lev.* 62. *Reeve* v. *Holgate.*
Ray. 86. *Ferry* v. *Hooper.*

Charging the Plaint^{ff} with having the Diſeaſe of the **French Pox.**

I have lain with her, and pockified her, was held actionable. 2 *Show.* 312. *Neal* & *Ux.* v. *Mallard.*

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1 *Cro.* 214. *Auſtin* v. *White.*
289. *Levett*'s Caſe.
648. *Davis* v. *Taylor.*
857. *Garford* & *Ux.* v. *Clark* & *Ux.*
878. *Brook* v. *Wiſe.*
2. *Box*'s Caſe.
2 *Cro.* 430. *Miller*'s Caſe.
Stile 283. *Eliot* v. *Blagues.*
219. *Hobſon* v. *Hadſon.*
112. *Smith.* v. *Hobſon.*
Hob. 219. *Critall* v. *Horner.*
2 *Shower* 285. *Jackſon* v. *Hall.*
2 *Keb.* 181, 183. *Huckley* v. *Limbe.*
1 *Syd.* 50. *Marſhall* v. *Chickhall.*
1 *Syd.* *Limbe* v. *Hockley.*
2 *Syd.* 5. *Coming*'s Caſe.
Godb. 278. *Culliford*'s Caſe.
Allen 30. *Dutton* v. *Eaton.*
1 *Show.* 312. *Neal* & *Ux.* v. *Mallard.*
1 *Cro.* 857. *Robins* v. *Franks.*

With **Leproſy.**

Noy 117. *Taylor* v. *Perkins.*

Words whereby **Loſs of Marriage** enſued.

1 *Cro.* 234. *Brian* v. *Cockman,* 3 *Cro.* 322.
639. *Preſton* v. *Pomfreit.*
2 *Cro.* 162. The Lady *Moriſon* v. *Cade.*
422. *Nelſon* v. *Staffs.*
3 *Cro.* 404. *Hawkins* v. *Bilhead.*
269. *Southhold* v. *Darinſton.*
Popham 36. *Davies* v. *Gardiner.*
Allen 6. *Edwards* v. *French.*
2 *Bulſt.* 90. *Matthew* v. *Croſſe.* 2 *Cro.* 323.
3 *Bulſt.* 48. *Lelly* v. *Facy.*
2 *Roll's Rep.* 433. *Thompſon* v. *Twinge.*
Palmer 385. *Taylor* v. *Tully* S.C. in *Latch* 211. reported by the Name of *Taylor* v. *Tolwin,*
Stile 118. *Volverly Strachy.* v.——
2 *Show.* 482. *Tuckey* v. *Flower.*

Words of a **Merchant.**

Dyer 72. *b.* *pl.* 6.
1 *Cro.* 348. *Arundell* v. *Mare,* 3 *Cro.* 552. S. C.
2 *Cro.* 562. *Johnſon* v. *Lemon,* *Palmer* 63.
3 *Cro.* 265. *Goodyer* v. *Biſhop.*
317. *Leycroft.* v. *Dunker.*
2 *Keb.* 549. *Drake* v. *Hill.* *Ray.* 184.

2 *Keb.* 718. *Vivian* v. *Willet Ray.* 207.
1 *Bulſt.* 134. *Tirlot* v. *Morris.*
3 *Salk.* 326. *Anonymus.*
Comber 292. *Hooker* v. *Tooker*, reported in *Carthew* 300. by the Name of *Cook* v. *Tooker.*
March 8. *Anonymus.*
1 *Roll. Rep.* 22. *Selby* v. *Carrier.*

Words ſpoken of a Tradeſman, relating to his Circumſtances.

3 *Cro.* 472. *Anonymus.*
Stile 273. *Rooke* v. *Smith.*
425. *Walkenden* v. *Haycock.*
429. *Wiſe* v. *Jeffries.*
142. *Jones* v. *Jacob.*
217. *Viccarye* v. *Barnes.*
388. *Townſhend* v. *Barker.*
T. Jones 140. *Peacock* v. *Leach.*
Hutt. 125. *Dawe* v. *Palmer.*
Comber. 74. *Chapman* v. *Lamphere*, 3 *Mod.* 155. S. C.
3 *Mod.* 112. *Dobſon* v. *Thormiſtone.*
2 *Show.* 295. *Garrett* v. *Shelſon*, *vide Nelſon's Lutw.* 334. 1 *Syd.* 424, 425.

Words charging the Plaintiff with the Slander of being a Bankrupt.

1 *Cro.* 26. *Griffith* v. *Morriſon.*
99. *Inglebath* v. *Johns.*
273. *Jordan* v. *Liſter.*
901. *Woolverſton* v. *Meres.*
268. *Stanley* v. *Osbaſton.*
2 *Cro.* 578. *Uſher* v. *Betts.*
345. *Selby* v. *Carrier* 1 *Roll's Rep.* 22. 2 *Bulſt.* 210.
222. *Tuthill* v. *Milton.*
578. *Upſheer* v. *Betts.*
585. *Squire* v. *Johns*, *Palmer* 151.
3 *Cro.* 31. *Crampe* v. *Barne.*
Yelv. 198. *Tirlott* v. *Morriſon*, 1 *Bulſt.* 134.
Palmer 314. *Hawkins* v. *Sciet.*
1 *Bulſt.* 40. *Anonymus.*
2 *Bulſt.* 267. *Michols* v. *Catſey.* 218.
Stile 75. *Wilſon* v. *Crow.*
130. *Anonymus.*
142. *Jones* v. *Jacob.*
426. *Roungs* v. *Woodyard.*
420. *Phillips* v. *Phillips.*
2 *Roll's Rep.* 243. *Scutt* v. *Hawkins.*
Godb. 151. *Langley* v. *Colſon.*
Hutton 46. *Allen* v. *Smith.*
2 *Show.* *Anonymus* 153.
Hetl. 171. *Waters* v. *Thomſon.*

Other Words ſpoken of a Man relating to his Trade.

1 *Cro.* 234. *Peirſon* v. *Goodays* 3 *Cro.* 329.
3 *Cro.* 211. *Flower's* Caſe.
570. *Ireland* v. *Blackwell.*
March 15. *Meade* v. *Ace.*
1 *Ventris* 263. *Crawfoote* v. *Dayle.*
117. *Anonymus.*
21. *Wharton* v. *Brooke.*
Stile 213, 217. *Viccarye* v. *Barnes.*
245. *Davis* v. *Ockham.*
Brownl. 5. *Slober* v. *Green.*
1 *Mod.* 19. *Redman* v. *Pyne.*
19. *Pryne* v. *Smith.*
3 *Mod.* 113. *Dobſon* v. *Thormiſtone.*
2 *Keb.* 489. *Wharton & Ux.* v. *Clover.*
3 *Salk.* 327. Diverſe *Anonymus* Caſes.
Raymond 62. *Davies* v. *Jones.*
231. *Southam* v. *Allen.*
Latch 114. *Hill's* Caſe.
188. *Dean* v. *Steel.*
1 *And.* 269. *Anonymus.*

Words of a Juſtice of Peace.

Moor 695. *Mariner* v. *Cotton.*
401. *pl.* 528. *Laſſells* v. *Laſſells.*
704. *Stafford* v. *Powlett.*
1 *Cro.* 313. *Bleverhaſſet* v. *Baſpoole.*
536. *Stafford* v. *Pooler*, 2 *And.* 47. S. C.
645. *Read's* Caſe.
2 *Cro.* 240. Sir *Henry Haſting's* Caſe, 1 *Bulſt.* 36.
413. *Burton* v. *Token.*
90. *Kemp* v. *Houſegoe.*
65. Sir *George Moor* v. *Foſter.*
56. Sir *John Harper* v. *Beaumont.*
3 *Cro.* 14. *Iſham* v. *York.*
223. Sir *William Marſham* v. *Bridges.*
Popham 180. Sir *William Button's* Caſe.
Stile 22, 210. *Hammond* v. *Kingſmills.*
4 *Co.* 16. *Stuckley* v. *Bultred.*
Farreſley 107. *How.* v. *Prin.* *Salk.* 694.
Salk. 20. *Brown* v. *Gibbons.*
Lutt. 1288. *Pepper* v. *Gay.*
Hetl. 169. *Hitcham* v. an Attorney.
2 *Keb.* 548, 579. *Kittle* v. *Osborn.*

2 Roll's Rep. 43. *Tasbrough*'s Caſe.
153. *Parker* v. *Large.*
1 *Lev.* 280. *Cam* v. *Oſgood.*
Yelv. 220. *Chetwyn* v. *Maſon.*
Comber 46. ———
66. *The King* v. *Darby.*
Mod. Caſes in L. & E. 270. *Aſhton* v. *Blagrave.*
Comb. 72. *Rouſe* v. *Wilcox*; reported in 3 *Mod.* 163. by the Name of *Prowſe* v. *Wilcox.*
1 *Vent.* 50. Sir *John Kele* v. *Oſgood*, 1 *Mod.* 22. 1 *Lev.* 280. 3 *Mod.* 139, 163. 1 *Syd.* 432.
1 *And.* 119. *Caſe* 168. *Broughton* v. *Biſhop of Coventry and Litchfield.*
Latch 49. *Button*'s Caſe.

Spoken of Officers in Places of Truſt or Profit.

1 *Cro.* 257. *Baal* v. *Beggerly.*
358. *Wright* v. *Morehouſe.*
623. *Fiſh* v. *Thorogood.*
861. *Taylor* v. *How.*
2 *Cro.* 427. Sir *William Bronker*'s Caſe.
80. *Stile* v. *Heath.*
557. *Feetwood* v. *Curle.*
3 *Cro.* 563. *Reignald*'s Caſe.
480. *Seaman* v. *Bigg.*
Win. 33, 40. *Curle* v. *Tuskes.*
Yelv. 62. Sir *George More* v. *Foſter.*
142. *Mile* v. *Swanſon.*
Stile 436. Sir *Edward Boynton*'s Caſe.
339. *Strode* v. *Homes.*
436. *Henley* v. *Baynton.*
2 *Roll's Rep.* 23. *Powell* v. *Cole.*
Godb. 157. *Lee* v. *Swann.*
1 *Bulſt.* 172. *Tut* v. *Kerton.*
Palmer 67. *Palmer* v. *Large.*
2 *Vent.* 266. *Walden* v. *Mitchell.*
6 *Mod.* 201. *Walmeſley* v. *Ruſſell.*
Poph. 139. *Powell*'s Caſe.

Words of a Counſellor.

1 *Cro.* 342. *Palmer* v. *Boyer.*
2 *Cro.* 267. *Rich* and *Holt*'s Caſe.
3 *Cro.* 382. *Peard* v. *Johns.*
Stile 283. *Gibbs* v. *Price*'s Caſe.
Popham 207. *Carie*'s Caſe.
Goldſb. 126. } *Palmer* v. *Boyer.*
Owen 17. }
Popham 139. *Powell*'s Caſe.
Noy 98. *Preſton*'s Caſe.
1 *And.* 269. *Anonymus.*

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Of an Attorney.

Allen 13. *Hilton* v. *Plater.*
Hetl. 823. *Litman* v. *Weſt.*
139. 143 *Starkey* v. *Taylor.*
167. *Aleſton* v. *Moore.*
169. *Gee* v. *Egan.*
1 *Cro.* 589. *Martin* v. *Burlings.*
602. *Stanley* v. *Boſwell.*
914. *King* v. *Shore.*
3 *Cro.* 192. *Taylor* v. *Starkey.*
229. *Anonymus.*
261. *Mead* v. *Perkins.*
459. *Webb* v. *Nichols.*
515. *Anonymus.*
40. *Lowe* v. *Plater.*
Moore 61. *Anonymus.*
180. *Anonymus.*
695. *Giddy* v. *Heale.*
855. *Yardley* v. *Ellis.*
867. *Coxe*'s Caſe.
Latch 220. *Trowbridge* v. *Hard.*
Stile 183. *Smith* v. *Andrews.*
3 *Salk.* 128. Diverſe *Anonymus* Caſes.
1 *Syd.* 326. *Baker* v. *Morfue.*
Yelv. 32. *Shire* v. *King.*
Godb. 214. *Anonymus.*
1 *Brownl.* 16. *Smailes* v. *Moore.*
Palmer 441. *Daubury* v. *Martin.*
2 *Vent.* 28. *King* v. *Lake.*
1 *Mod.* 272. *Jones* v. *Powell.*
Hob. 8, 9. *Yardley* v. *Ellill.*
Ley 70. *Roberts* v. *Lord.*
1 *Bulſtr.* 13. *Tirlot* v. *Morris.*

Words of general Slander relating only to a good Name.

Moor 10. *Anonymus.*
1 *Cro.* 11. *Browne* v. *Dauks.*
384. *Jenkinſon* v. *Mayne.*
Allen 35. *Mark* v. *Cubit*, *Stile* 49. S. C.
1 *Keb.* 525. *Henacre* and *Betts* v.—
1 *Roll's Rep.* 420. *Root* and *Melling.*
Parmer 298. *Vaughan* v. *Scandiſh.*
Stile 221. *Winter* v. *Barnard.*
1 *Lev.* 140. *Coleman & Ux.* v. *Harecourt.*

Charging the Plaintiff with Whoredom.

Stile 328. *Brian* v. *Twite.*
394. *Hicks* v. *Joyce.*
424. *Stevens* v. *Ask.*
455. *Price* v. *Carr.*
460. *Williams* v. *Probe.*

2 *Syd.* 7. *Marſton* v. *Dennis.*
21. *Anonymus.*
34. *Colſwood* v. *Chandler.*
Comb. 391. *Byron* v. *Elmes.*
Salk. 694. *Anonymus.*
3 *Mod.* 120. *Baldwin* v. *Flower.*
1 *Roll. Rep.* 420. *Roote* v. *Melling.*
2 *Cro.* 462. Sir *William Read* & *Ux.* v.——— *A.*
2 *Syd.* 5. *Margaret Coming*'s Caſe.

With keeping a Bawdy-houſe.

1 *Bulſt.* 138. *Simpſon* v. *Brooke.*
Stile 322. *Garland* v *Tarrow.*
2 *Lev.* 233. *Newton* & *Ux.* v. *Maſters.*
Ray. 115. *Ward* v. *Marſh.*
2 *Syd.* 15, 34. *Hobſon* v. *Blackwell.*
March 212. *Chambers* & *Ux.* v. *Ryley.*
3 *Keb.* 472. *Anonymus.*
748. *Thatcher* v. *Moys.*

Calling the Plaintiff a Baſtard.

2 *Cro.* 413. *Vaughan* v. *Ellis.*
642. *Elbrow* v. *Allen.*
2 *Roll's* 248. *Palmer* 299.
Godb. 327, 421. *Anonymus.*
3 *Cro.* 46. *Humphry's* v. *Stanfield.*
W. Jones. 358.

Words ſpoken in a Foreign Language.

Hob. 126. 195. *Gibbs* v. *Jenkins.*

Of a Member of Parliament.

Lut. 1293. *Howe* v. *Perry.*

Of a Doctor of Phyſick.

Godb. 44. *Cawdry* v. *Tetley*'s Caſe.
1 *Jon.* 366. Doctor *Sibthorpe*'s Caſe.

Of a Witneſs.

Lut. 1292. *Stable* v. *Sayle.*

Words ſpoken of a Juryman.

Moor 876. *Anonymus.*

Of Slander by Writing.

Moor 141. *Broughton*'s Caſe.
Moor 705. *Wood* v. *Buckley*, 1 *Cro.* 230. S. C. 297. S. C.
2 *Vent.* 28. *King* v. Sir *Edw. Lake.*
1 *Keb.* 255, 269, 308, 326, 459. *Shepherd* v. *Wakeman.*

Words ſpoken of a Clergyman.

Stile 44. *Anonymus.*
363. *Drake* v. *Drake.*
2 *Keb.* 400. *Humoriſt* v. *Payne.*
Allen 63. *Dod* v. *Robinſon.*

Of a Juſtice of Peace.

For ſending a Warrant in Order to have him arreſted, wherein he recited, that the Plaintiff had been accuſed before him of Felony, whereas he never was. *Windham* v. Sir *Edward Cleer*, *Leon.* 187.
Dominus Rex v. *Darby*, *Mod.* 3. 139.
Hardr. 501. *Pugh* v. *Owen.*
Moor 409. Lord *Delaware* v. *Pawlett.*
Cro. Eliz. 536. *Stafford* v. *Poole.*
883. *Chicheley* v. *Barker.*
Comb. 46, 65, 66.

Words charging a Perſon with a Rape, or with an Intent to raviſh.

1 *Cro.* 589. *Redferne* v. *Tod.*
2 *Syd.* 76. *Langley* v. *Clarke.*
2 *Cro.* 666. *Ridges* v. *Milles.*

Charging the Plaintiff with Piracy.

1 *Cro.* 62. *Morgan* v. *Kiffe.*
Palmer 278. *Bennett*'s Caſe.
Latch 47. *Adam*'s Caſe.

Charging the Plaintiff with Incontinency.

Stile 370. *Sherecroft* v. *Weekes.*
Salk. 693. *Aubery* v. *Barton.*
2 *Syd.* 7. *Marſton* v. *Dennis.*

Words Concerning a Title to Lands.

Hetley 31. *Andrews* v. *Bird.*
1 *Cro.* 419. *Marvin* v. *Maynard.*

2 *Cro.* 163. Earl of *Northumberland* v. *Byrt.*
213.
Telv. 88. *Greſham* v. *Grinſley.*
Owen 32.
2 *Cro.* 397. *Smead.* v. *Bradley.*
422. *Nelſon* v. *Staffe.*
484. *Tasburgh* v. *Day.*
642. *Elborow* v. *Allen.*
1 *Roll's Abr.* 88.
Danv. Abr. 164.
Stile 414. *Anonymus.*
1 *Cro.* 196, 197. *Gerard* v. *Dickenſon.*
1 *Syd.* 79, 82.
1 *Keb.* 309.
3 *Keb.* 141.
3 *Leon.* 177. *Williams* v. *Linford.*
2 *Leon.* 111. The ſame Caſe.
1 *Roll's Rep.* 409.
Moor 172.
Moor 144. *Mildmay* v. *Standiſh.*
1 *Cro.* 34. S. C.
Moor 187. *Johnſon* v. *Smith.*
2 *Roll's Rep.* 44. *Egerton* v. *Whittington.*
Moor 411. } *Penniman* v. *Rawbanks.*
1 *Cro.* 427. }
2 *Bulſtr.* 90.

Words of a Phyſician.

2 *Cro.* 270. *Cawdry* v. *Highley.*
1 *Roll's Abr.* 54. *Pl.* 10, 11, 12.

Secondly, What Words have been adjudged not actionable.

Charging the Plaintiff with Treaſon, or Want of Allegiance.

1 *Cro. Eliz.* 878. *Fountain* v. *Rogers.*
214. *Peak* v. *Pollard.*
268. *Fowler* v. *Aſhton.*
Godb. 147. *Kingſton* v. *Hill's* Caſe.
2 *Brownl.* 166. *Ireland* v. *Smith.*
2 *Syd.* 132. *Glanvil* v. *Gully.*
Cro. Eliz. 275. *Berisford* v. *Preſs.*

With Clipping or Coining.

Godb. 167. *Ward* v. *Pool's* Caſe,
375. *Mill's* Caſe.
391. *Symn's* Caſe.

With Murder.

2 *Cro. Jac.* 635. *Harvey* v. *Chamberlain.*
Palmer 283.
1 *Cro. Eliz.* 503. *Elinor Bliſſot* v. *Johnſon.*
620. *Poe* v. *Mondford.*
Godb. Mich. 11 *Jac.* 239.
Palmer 66. *Gibbon* v. *Maggot.*
Telv. 153. *Weblin* v. *Mayor.*
March 109.
Owen 33. *Winter* v. *Barnam.*
4 *Leon.* 54. *Chriſtian* v. *Adams.*
Godb. 181. *Carle's* Caſe.
2 *Cro.* 331. *Barnes* v. *Ball.*
635. *Harvey* v. *Chamberlain.*

With Theft or Robbery.

Cro. Jac. 214. *Frank* v. *Alſop.*
302. *Anne Long* v. *King.*
530. *Sparham* v. *Pye.*
65. *Robins* v. *Hildredon.*
536. *Betts* v. *Trevanian.*
687. *Foſter* v. *Browning.*
204. *Powell* v. *Hutchins.*
Cro. Eliz. 308. *Ball* v. *Roane*, for want of an Averment.
353. *Lyne* v. *Blackhouſe.*
486. *Hall* v. *Heneſly.*
672. *Anonymus.*
780. *Griffith's* Caſe.
563. *Anonymus.*
889. *Brown* v. *St. John.*
Godb. 241. *Colt* and *Gilbert's* Caſe.
Hutton 2. *Steward* v. *Biſhop.*
8. *Gibbs* v. *Davie.*
72. *Potter* v. *Brown.*
1 *Brownl.* 2. *Cowte* v. *Gilbert.*
2. *Scarlet* v. *Stibbs.*
Palmer 66. *Gibbon* v. *Maggott.*
29. *Bradſhaw* v. *Walker.*
358. *Strong* v. *White.*
Hob. 77. *Coote* v. *Gilbert's* Caſe.
331. *Cleark* v. *Gilbert.*
Hob. 177. *How* v. *Biſhop.*
Telv. 4. *Dawſon.*
90. *Heake* v. *Moulton.*
Syd. 35. *Lizard* v. *Clare.*
Winch 3. *Goddard* v. *Gilbert*, S. C.
Winch 10.

1 *Keb.* 902. *Maſon* v. *Elliot.*
Owen 56. *Anonymus.*
1 *Vent.* 213. *Anonymus.*
2 *Roll's Rep.* 73. *Guilford's* Caſe.
381. *Ayre* v. *Higgins.*
2 *Brownl.* 280. *Flemming* v. *Jales*, *Ayre's* Caſe.
Stile 46. *Perſon* v. *Dawſon.*
Moor 396. *Caſtleman* v. *Hobs.*
401. *Barler's* Caſe.
407. *Brown* v. *Brinckley.*
409. *Brooke's* Caſe.
2 *Cro.* 65. *Robins* v. *Hildredon.*
166. *Loe* v. *Saunders.*
1 *Cro.* 279. *Charnett's* Caſe.
Stile 298. *Biſhop* v. *Fitzherbert.*

With **Felony** or **Burglary.**

1 *Cro. Eliz.* 279. *Bayly* v. *Churington*, *Smith's* Caſe.
889. *Cox* v. *Humphrey* *Brown* v. *St. John.*
250. *Stoner* v. *Audley.*
470. *Hall* v. *Mabbs.*
834. *Levet* v. *Hawthorne.*
2 *Cro.* 90. *Brook* v. Sir *Henry Montague.*
Godb. 202. *Trin.* 10. *Jac.*
339. *Wheeler* v. *Appleton.*
Hutton 38. *Maſon* v. *Thompſon.*
113. *Ram* v. *Lamley.*
1 *Brownl.* 18. *Gowland* v. *Maſon.*
Hob. 305. *Poland* v. *Maſon*, 306. S. C.
2 *Keb.* 401. *Gaudy* v. *Smith.*
1 *Keb.* 345. *Crawford* v. *Dawſon.*
Stile 298. *Biſhop* v. *Fitzherbert.*
Latch 175. *Robert King's* Caſe.
Poph. 210. *King* v. *Merrick.*
Noy 124. *Bayly* v. *Child.*
Yelv. 21. *Barham* v. *Netherſet.*

Charging the Plaintiff with concealing or partaking of **Felony.**

4 *Leon.* 24. *Bluet* v. *Cooks.*
Allen 57. *Creſwell* & *Ux.* v. *Ventres* & *Ux.*

With **Forgery.**

1 *Cro. Eliz.* 166. *Venard* v. *Wotten.*
1 *Cro.* 853. *Perkinſon* v. *Bowman.*
99. *Eugurſt* v. *Browne.*
554. *Goodale* v. *Caſtle.*
Hob. 45. *Harvey* v. *Duckin.*
327. *Powell* v. *Wind.*
Winch. *Trin.* 22 *Jac.* 90.
1 *Roll.* 431. *Aier* v. *Froſt.*

With **Perjury.**

1 *Cro. Eliz.* 297. *Leveemore* v. *Martin.*
371. *Weaver* v. *Carden.*
394. *Anonymus.*
609. *Anonymus.*
788. *Wyſon* v. *Fenton.*
905. *Gore* v. *Moorton.*
168. *Kinnerſly* v. *Cooper*, 2 *Leon.* S. C.
2 *Cro. Jac.* 120. *Sill* v. *Heath.*
432. *Weſton* v. *Dobinet.*
462. Sir *William Reed* & *Ux* v. *A*———
Hutton 34. *Adavis* v. *Fleming.*
44. *King* v. *Bowen*, *Winch* 2. S. C.
127. *Davis's* Caſe.
1 *Brownl.* 13. *Adams* v. *Fleming.*
1 *Keb.* 124. *Simon* v. *Judd.*
2 *Keb.* 548. *Kirle* v. *Osborn.*
1 *Syd.* 48. *Danell's* Caſe.
220. *Ball* v. *May.*
Noy 36. *Brown* v. *Mitchell.*
March 20. *Molton* v. *Clapham.*
1 *Roll's Rep.* 287. *Apthorpe* v. *Cockerell.*

With **Deceit.**

1 *Cro. Eliz.* 171. *Ryle's* Caſe.
95. *Gorge's* Caſe.
403. *Brook* v. *Watſon.*
848. *Brown* v. *Street.*
843. *Robinſon* v. *Mellor.*
2 *Cro.* 239. *Hutton* v. *Bech.*
424. *Loyd* v. *Pearſe.*
3 *Cro.* 282. *Collis* v. *Malin.*
563. *Reginald's* Caſe.
Hutton 13. 26 *Eliz.*
14. *George* v. *Whitlock* *Walcot* v. *Hind.*
34. *Bayſhaw* v. *Walker.*
Hob. 76. *Bray* v. *Hayne.*
219. *Drury* v. *Fitch.*
Stile 422. *Thomkins* v. *Clark.*
2 *Bulſtr.* 138. *Killick* v. *Barns.*
2 *Roll's Rep.* 72. *London* v. *Eaſtgate.*
Raymond 69. *Smedley* v. *Heap.*
Syd. 48. *Welden* v. *Johnſon.*
299. *Emerſon* v. *Fairfax.*
Jon. 308. *Major Tiverton.*
1 *Lev.* 250. *Smedley* v. *Heath.*
Owen 47. *Trin.* 30. *Eliz.*
Godb. 40. *Hill.* 28 *Eliz.*
1 *Brownl.* 16. *York* v. *Cecil.*

13. *Bradſhaw* v. *Walker*.
Popham 184. *Barker* v. *Ringroſe*.

For Words of Witchcraft.

2 *Cro.* 531. *Hawkes* v. *Ange*.
3 *Cro.* 320. *Broxhome & Ux.* v. *Dager & Ux.*
202. *George & Ux.* v. *Harvey*.
Hutton 132. *Souſer* v. *Burton*.
1 *Brownl.* 14. *Hinch* v. *Heald*.
2 *Brownl.* 276 *Payne* v. *Mutton*.
Stile 5. *Nulls* v. *Cheney*.
11. *Hellena*.
47. *Turner & Ux.*
3 *Bulſtr.* 74. *Lowes* v. *J. S.*
All. 37. *Yates* v. *Lindall*.
Palmer 297. *Anne Knight*'s Caſe.
Cro. Jac. 531. *Oliver & Ux.* v. *Stephens*.
Noy 22. *S. P. Cro. Jac.* 639. *S. P. Godb.* 341.
S. P. Bulſtr. 74. S. C. 1 *Roll's Rep.* 255. S. C.
Cro. Jac. 399. S. C. *Cro. Jac.* 150. S. C.
2 *Keb.* 548. *Seemor* v. *Moor*, *Syd.* 424. S. C.

Words of a Merchant.

Moor 409. *Carter*'s Caſe.
1 *Cro. Eliz.* 424. *Charter* v. *Hunter*.
541. *Vanſpike* v. *Cleyſon*.
403. *Brook* v. *Watſon*.
2 *Keb.* 549. *Drake* v. *Hill*. *Syd.* 424. S. C.
2 *Bulſtr.* 216. *Crook* v. *Avery*.
Owen 56. *Trin. Eliz.* 37.
Godb. 252. *Crook* v. *Averin*'s Caſe.
Popham 148. *Godfrey* v. *Owen*.
Hardr. 8. *Wake* v. *Chapman & Ux.*

Words of a Trade that have been adjudged not actionable.

3 *Cro.* 417. *Needler* v. *Symnoll & Ux.*
2 *Keb.* 568. *Redman* v. *Pill*.
3 *Keb.* 242. *Collins* v. *Mathews*.
W. Jones 444. *Fenn* v. *Dixe*.
5 *Mod.* 398. *Savage* v. *Robury*.
Hardr. 8. *Wake* v. *Chapman & Ux.*
2 *Roll.* 136. *Clarke*'s Caſe.
Latch 114. *Hill*'s Caſe.

Words ſpoken of Officers in Places of Truſt or Profit.

1 *Cro.* 848. *Brown* v. *Street*.
854. *Greeve* v. *Copſhill*.
191. Sir *William Waldegrave* v. *Agas*.
Godb. 284. Sir *William Bronker*'s Caſe.
Winch 123. Sir *Robert Hitchin* v. *Brooke*.
Telv. 72. *Stile* v. *Heap*.
1 *Vent.* 275. *Thatcher*.

Words againſt a Juſtice of Peace, that have been adjudged not actionable.

1 *Cro. Eliz.* 306. 433. Sir *Chriſtopher Hillard* v. *Conſtable*.
374. *Brawne* v. *Michaell*.
786. *Royall* v. *Peckham*.
834. *Lovet* v. *Hawthorn*.
297. *Butler* v. *Paynter*.
308. *Perepoint*'s Caſe.
2 *Cro.* 484. *Tasburgh* v. *Day*.
Palmer 67. *Parker* v. *Large*.
1 *Keb.* 307. *Bill* v. *Neal*.
Hard. 501. *Pugh* v. *Owen*.
1 *Vent.* 258. *Anonymus*.

With the Slander of Baſtardy.

Cro. Car. 432. *Slater* v. *Browne*.
577. *Hexill* v. *Oyden*.
2 *Roll's Rep.* 24. *Randall* v. *Bell*.
Jones 356. *Coloabyn & Ux.* v. *Vinor*.
Poph. 140. *Bernard* v. *Beal*.
Comber 391. *Byron* v. *Elms*.

With Whoredom.

1 *Cro.* 582. *Pollard & Ux.* v. *Armſhaw*.
2 *Cro.* 473. *Barmund* v.———
Salk. 696. *Graves* v. *Blanchatt*.
Comber. 28, 29. *Tuckey* v. *Flower*.
Stile 323. *Green* v. *How*.
299. *Freeman* v. *Childereſs*.
Skinner 86. *Anonymus*.
1 *Keb.* 119. *Whitaker*'s Caſe.
222. *Toomes* v.———
1 *Syd.* 396. *Barnes* v. *Prudlin*, 2 *Keb.* 451.
Stile 352. *Wall & Ux.* v. *Bye*.
387. *Dekin* v. *Turner*.

Charging the Plaintiff with the Diſeaſe of the Pox.

Cro. Eliz. 214. *Auſtin* v. *White.*
Cro. Jac. 499. *Hunt* v. *Jones.*
414. *Califord* and *Joan his Wife* v. *Knight. Godb.* 278.
Moor 573. *James* v. *Rudledge.*
Allen 30, 31. *Dutton* v. *Eaton.*

With Petty Larceny.

1 *Roll's Rep.* 286. *White* v. *Brough.*
Owen 56. *Trin.* 37 *Eliz.*
Hutton 14. *Charter* v. *Hunter.*

With being Guilty of a Rape.

Godb. 287. *Bridges* v. *Mill's* Caſe; this is the ſame Caſe reported in 2 *Cro.* 686. by the Name of *Ridges* v. *Mills.*

With Bigamy.

1 *Cro.* 94. *Nicholſon* v. *Line.*
Allen 87. *Eeles* v. *Smith.*

Words ſpoken of a Tradeſman.

3 *Cro.* 417. *Needler* v. *Symnell & Ux.*
Comber 161. *Rice* v. *Pidgeon.*
T. Jones 156. *Fox* v. *Lapthorne.*
Raymond 169. *Smedley* v. *Heap.*
Hob. 140. *Thornton* v. *Jebſon.*

Words comparing a Man to another guilty of a Crime.

1 *Cro.* 31. *Smith's* Caſe.

Charging the Plaintiff by Words that were not Certain.

3 *Cro.* 283. *Stirly* v. *Hill.*
Hutton 18. *Bland's* Caſe.

Of a Clergyman.

Cro. Eliz. 502. *Parrat* v. *Carpenter.*
94. *Nicholſon* v. *Lyne.*
Raym. 395. *Walſal* v. *Mary Allen.*
Stile 49. *Anonymus.*

Words charging a Perſon with being a Bawd, or keeping a Bawdy-Houſe.

1 *Cro.* 643. *Anonymus.*
3 *Cro.* 393. *Dymmock* v. *Fawcett.*
2 *Keb.* 589. *Gowell & Ux.* v. *Birkett.*
1 *Syd.* 241. *Ward* v. *March.*

Words concerning a Title to Lands.

2 *Cro.* 337. *Smead* v. *Bradley, S. P.* 1. *Roll's Rep.* 244. by the Name of *Swead* v. *Bradley.*
3 *Cro.* 140. *Lawe* v. *Harwood.*
3 *Keb.* 141. *Goulding* v. *Herring.*
153. *Manning* v. *Avery.*
Stile 177. *Cane* v. *Goulding.*
Ray. 12. *Rawlins* v. *Hill.*
1 *Roll's Rep.* 409. *Lovet* v. *Weller.*
Telv. 88. Sir *Thomas Greſham* v. *Grinſley.*

Of an Attorney.

3. *Cro.* 510. *Jefferyes* v. *Payhem.*
1 *Ventris* 98. *Jones* v. *Powell.*
T. Jones 23. *Payn* v. *Verdon.*
1 *Brownl.* 6. *Tardley* v. *Ellill.*
9. *Harvey* v. *Bucking.*
2 *Brownl.* 253.——— v. *Trotman.*
3 *Keb.* 136. *Ravenhill* v *Mole.*

Words uncertain as to any Crime at all.

1 *Cro.* 62. *Donne's* Caſe.
854. *Greeve* v. *Copſhill.*
348. *Nicholls* v. *Badger.*
1 *Brownl.* 13. *Bradſhaw* v. *Walker.*
Raymond 75. *Harvey* v. *Martin.*
2 *Lev.* 214. *Cockaine* v. *Hopkins.*
Stile 49. *Mark* v. *Cubit.*
127. *Stent* v.———
Palmer 10. *Trevilian* v. *Bettie.*
21. *Godfrey* v. *Owen.*
2 *Bulſt.* 206. *Murrey* v.———
3 *Keb.* 34. *Watts* v. *Grimes.*
Noy 64. *Thimblethorpe's* Caſe.

Words in a ſtrange Tongue.

1 *Cro.* 865. *Price* v. *Jenkins.*
Hob. 191. *Gibbs* v. *Jenkins.*
Stile 265. *Roſs* v. *Lawrence.*
Hetley 175. *Goſſe* v. *Browne.*

With **Sacrilege.**

1 *Lev.* 250. 1 *Syd.* 376. *Gandy* v. *Smith.*

With **Barretry.**

1 *Cro.* 171. *Prond* v. *Hawes.*

With aiding or aſſiſting in **Theft** or **Robbery.**

3 *Bulſtr.* 167. *Crofts* v. *Brown.*
3 *Bulſtr.* 249. *Lewknor* v. *Godnam.*
Telv. 64. Sir *John Hollis* v. ——

Secondly, **Of the Declaration.**

1. To ſay in the Declaration, that the Defendant ſpoke certain falſe and ſcandalous Words, the *Tenor* of which is in the *following Words*, is not good, for it is no expreſs Allegation that he ſpoke the ſame Words, and ſomething might be omitted in the *quorum Tenor*, tho' it is uſual in pleading a Deed or Record to plead it ſo; and that is, becauſe the Deed or Record may be viewed to ſee the Agreement or Diſagreement between it and the Plea. *Cro. Eliz.* 857. *Garford and his Wife* againſt *Clarke.*

2. The ſame Point is adjudged in 3 *Mod.* 71. in the Caſe of Sir *John Newton and others* againſt *Stubbs.* 2 *Show.* 456. S. C.

3. In alledging the Words to be ſpoken in the Declaration, it has been held not to be ſufficient to ſay that the Defendant ſpoke theſe falſe ſcandalous Words following, (to wit) *Mr.* Price, *you do my Lord* Burleigh *wrong, that you do not apprehend* Jeremy Johnſon, (meaning the Plaintiff) *for a Felon, and ſeize his Goods, for he,* (meaning the Plaintiff) *hath ſtolen a Sheep from* Wright *of* Kirsby, (meaning *John Wright*) for here is no Certainty in the Declaration, that they were ſpoken of the Plaintiff, and the Judgment was arreſted. *Cro. Jac.* 126.

4. Where Words are alledged to be ſpoken in the *Preſence* of diverſe People, it ſhall be deemed as well as if it had been *in Preſentia & auditu.* 1 *Cro.* 487. *Hall* v. *Henneſly.*

5. To alledge, that the Defendant ſpoke ſuch Words, or ſuch like Words, or Words to that Purpoſe, is not certain enough. 645. *Hall* v. *Cranfield.*

6. It is neceſſary to ſet forth, that the Words were ſpoken in *Engliſh. Moor* 182. *Anonymus.*

7. Where the Plaintiff declared, that the Brother of the Defendant had ſpoken theſe Words of the Plaintiff, *viz. Thou Thief, thou Gaol-Whelp, thou haſt ſtolen a Piece of Silver from my Maſter* Hocken, and the Defendant ſaid as follows, *That which my Brother ſpoke is true, I will juſtifie it, and ſpend a hundred Pounds in Proof thereof*; the Court held, that this was not a ſufficient Manner of declaring, but it ought to have been ſpecially averred, that the Defendant had Notice of the Words ſpoken by his Brother. 2 *Brownl.* 100. *Anonymus.*

8. Where the Declaration had ſet forth a *Colloquium* of his Perſon, and then ſet forth, that the Defendant ſpoke theſe Words of him, and his Trade, *viz. That he is a cheating Knave*, it was held good after a Verdict. 1 *Vent.* 115. *Terry* v. *Hooper.*

9. If the Declaration has a ſufficient Deſcription that the Words were ſpoken of the Plaintiff, and tho' there ſhould be ſome Matter repugnant, which contradicts their having been ſpoken in ſuch a Manner, yet that repugnant Matter is to be rejected; as where the Declaration ſet forth, that there was a Diſcourſe between *E.* the Plaintiff's Wife, and *E. C.* the Defendant's Wife concerning the Plaintiff, upon which the Defendant *E. C.* ſaid to the ſaid *E. C.* of the Plaintiff, *Thy Husband, &c.* now it is inconſiſtent that *E. C.* ſhould ſpeak to her ſelf Words of the Plaintiff; therefore the Sirname of *Eliz.* ſet forth in the Declaration ſhall be rejected,

jected, and they ſhall be intended to have been ſpoken to *E.* the Wife of the Plaintiff. *Nicholls* v. *Brampton.* 1 *Roll's Abr.* 82. *pl.* 15.

10. Where the Declaration was held ill for a Slander of *Perjury*; not ſufficiently alledging therein, that the Party before whom the Oath was taken had a ſufficient Authority. *Cro. Eliz.* 169. *Kimerſly* v. *Cooper.*

11. Where the Plaintiff declared, that he had uſed the Trade of buying and ſelling Cattle for a long Time, and had ſeveral Times bought upon Credit, and the Defendant ſaid the Plaintiff *was a Bankrupt*; The Declaration was held ill, becauſe he did not ſhew in the Declaration at that Time he was of that Trade. 3 *Cro.* 282. *Collis* v. *Malin.* 3 *Cro.* 273. 2 *Cro.* 222. *Yelv.* 25.

12. Where a Declaration is bad and uncertain, it may be made good by the Defendant's Plea; as where the Plaintiff ſets forth, that the Defendant ſaid *the Plaintiff was forſworn*, but had not alledged that he was *forſworn* in any Court, and the Defendant juſtifies, ſhewing the Oath that the Plaintiff had taken in the *open Seſſions*, and that it was falſe; by Reaſon whereof, &c. here the Plea had made good the Incertainty of the Declaration, which elſe would have been incertain and ill. 3 *Cro.* 288. *Drake* v. *Corderoy.*

13. Where the Plaintiff declared, that the Defendant ſpoke theſe Words of him, (to wit) *Thou*, &c. this was held to be a good Declaration, for being ſpoke to him, they are ſpoken of him. *Kelham* v. *Mansby*, *Cro Ja.* 39.

14. Where an Action is brought for Words in an Inferiour Court, by the Speaking of which the Plaintiff hath received a particular Damage; that particular Damage muſt be alledged to have been received within the *Juriſdiction* of ſuch Inferiour Court, otherwiſe the Declaration is ill. *Littleboy* v. *Wright*, *Ray.* 63. But in 3 *Cro.* 570. in the Caſe of *Ireland* v. *Blackwell*, where theſe Words were ſpoken of a Taylor, *viz. That he had cheated in his Trade*; and this was upon a Writ of Error on a Judgment in *Bath*, where the Words were alledged to be ſpoken at *Bath*, within the Juriſdiction of that Court, and that by ſpeaking of theſe Words the Plaintiff loſt ſeveral Cuſtomers in the County of *Wilts*; and an Exception was taken, that it being within a particular Juriſdiction, the Jury have no Authority to inquire of Matters out of the Juriſdiction; the Court held that this being only an Allegation in reſpect of Damages, for the Increaſe of which the Jury might inquire of it, in any Place whatſoſoever, it was well enough; and the Judgment was affirmed. The ſame Caſe is likewiſe reported in *W. Jones* 450.

15. And to maintain this Exception, the Caſe of *Ive* v. *Stone* was cited in 1 *Roll's Abr.* 545. Letter *L. pl.* 3. where an Action upon the Caſe was brought in *Windſor Court*, upon a Promiſe, that in Conſideration the Plaintiff undertook to draw with four Horſes 1500 Tiles, from a Meſſuage in *Hedley*, in the County of *Bucks*, to the Top of *Hedley-Hill*, the Defendant promiſed to pay 5 *l.* and in as much as that Inferiour Court could not proceed to try this Matter, becauſe it appears, that *Hedley-Hill*, and the *Houſe*, was in the County of *Bucks*, of which the Jury within the Juriſdiction of the Court of *Windſor* could not inquire; the Judgment was reverſed. The ſame Point is likewiſe adjudged in 3 *Cro.* 571.

16. In an Action for Damages by Loſs of Marriage, alledging that he intended, and was endeavouring to marry ſuch a Woman, is not certain enough. 2 *Bulſtr.* 276, 277. *Sell* v. *Facy.*

17. Yet where a *Communication* was alledged of a Marriage with *M. H.* and that he was like to have married her, but for the Speaking of ſuch Words ſhe refuſed, was held good. *Allen* 6. *Edwards* v. *French.*

18. So in declaring for a Slander of a Title to Lands, it has been held not ſufficient to ſay, That the Plaintiff had a Purpoſe to ſettle Lands upon his Son, and alſo to make certain Leaſes; but if he had ſaid, that having a Communication about ſetling of Land, and making Leaſes, and that he purpoſed ſo to do; the Lord Chief Juſtice *Coke* ſaid it would have been good. *Smead* v. *Badley*, 3 *Bulſtr.* 75, 6.

19. So where the Declaration was, that the Plaintiff was like to have ſold his Lands, and was hinder'd by Words ſpoken by the Defendant, that was not held ſufficient; for he ought to have alledged, that there was a Communication had before the Words ſpoken, touching the Sale of thoſe Lands, and that by ſpeaking thereof he was hindred. *Cane* v. *Golding*, *Stile* 169, 177.

20. And that a Communication ought to be ſet forth in this Manner, *viz.* That the Plaintiff had a Communication with *A. B.* concerning the Plaintiff's ſelling ſuch Land to the ſaid *A. B.* and that upon ſuch Communication, the ſaid *A. B.* was willing, and intended to have bought them, and then ſet forth the Slander. *Tasbourgh* v. *Day*, 2 *Cro.* 484, 485.

Of the Colloquium.

1. It is ſaid in *Raymond* 86. in the Caſe of *Terry* v. *Hooper and his Wife*, by *Jones*, That in ancient Times, it was the conſtant Courſe in Declarations, to lay a *Colloquium* of the Plaintiff; and it had been a great Doubt, whether the Declaration was good without it, until that Point was ſetled in the Caſe of *Smith* v. *Ward*, in *Cro. Jac.* 673. and there it was reſolved, that the Words being alledged to be ſpoken of the Plaintiff, it ſupplies the Place of a *Colloquium*.

2. But if a Man calls a Tradeſman *a Cozener*, or *a Cheater*, theſe Words will not bear an Action, without there be a *Colloquium* of his Trade laid in the Declaration. *Hard.* 8. *Wake* v. *Chapman and his Wife*, 5 *Mod.* 398. *Savage* v. *Robury*, 2 *Salk.* 694. 1 *Vent.* 117, 263. *Ray.* 62, 169. *Jones* 156. 2 *Saund.* 307. 1 *Lev.* 280. 2 *Ven.* 62.

3. Where the Words ſpoken of an Attorney were, *that he could not read a Declaration*, it ought to have been averr'd that he could read one, but in as much as it was, that the Defendant *falſo dixit*, &c. it was held well enough after a Verdict. 1 *Ven.* 297. *Powell* v. *Jones*.

4. Where Words are ſpoken of a Man, *of ſtealing the Goods of another*, not mentioning the Name of the Perſon, or what the Goods were, yet it has been held, that there is no need to lay a *Colloquium*; as where the Words were, *he ſtole the Colonel's Cupboard-Cloth*; ſo 'tis ſaid in that Caſe, the ſame had been good if the Defendant had ſaid, *that the Plaintiff ſtole my Lord's Horſes, or the Parſon's Sheep.* Anonymous, 3 Mod. 280.

5. And where the Words were, J. P. *is a Knave, and a buſie Knave, for ſearching after me, and other honeſt Men of my ſort, and I will make him give Satisfaction for plundering me*; ſpoken of a *Juſtice of Peace*, and no *Colloquium* laid of his being a Juſtice; by two Judges againſt two, the Opinion was, that no *Colloquium* was neceſſary, and ſo the Plaintiff had Judgment. 3 *Mod.* 163. the Caſe of *Prowſe* and *Wilcox*.

6. Theſe Words were ſpoke of the Plaintiff, Britteridge *is a perjured old Knave, and that is proved by a Stake parting the Land of* A. *and* B. Theſe Words were held not to be actionable, becauſe it did not appear that he was perjur'd by a judicial Oath, and the Stake could not prove him perjur'd; but if there had been a proper *Colloquium* ſet forth, as the Truth was, the Action would have lain, (to wit) that they had a Diſcourſe about a Controverſy, whether the Stake ſtood upon the Land of the one, or the other; and the Plaintiff as a Witneſs depoſed, &c. and as the De-

fendant pretended, *perjured himſelf in his Evidence.* 4 Co. 19. *Britteridge*'s Caſe.

3 *Cro.* 177. *Shalmer* v. *Foſter and his Wife.*
236. *Mot and his Wife* v. *Butler.*

7. Where a Communication is alledg'd to have been at *H.* and that upon ſuch Communication the Defendant ſaid ſuch Words, this is not a right Way of declaring, becauſe, tho' the *Communication* was alledged to be at *H.* and that upon that *Communication* the Words were ſpoken, it ought to have been alledged, that the Defendant then and there ſpoke the Words; for the Communication might be at *H.* and the Words might have been ſpoken at another Place. *Palmer* 385. *Taylor* v. *Tully*; nor is it good to ſay the Words were ſpoken at *D.* and *S. Dal.* 106. 2 *Roll's Rep.* 373.

8. Where a *Colloquium* was alledged to be of the Plaintiff, by the Defendant, and the Declaration ſet forth, that the Defendant ſaid, *Thou, &c.* but did not ſet forth that the Words were ſpoken, either to or of him, yet it was held well enough. *Biſhop* v. *Fitzherbert*, 1 *Roll's Abr. fol.* 85. *pl.* 8. *Cro. Jac.* 126.

9. Where a *Colloquium* is alledged of the Plaintiff, and the Words are ſuppoſed to be ſpoken to a third Perſon, 'tis neceſſary to ſhew to whom they were ſpoken; as where the Words are, *Your Father*, (meaning the Plaintiff) *hath ſtruck and killed* Nicholas Ruſſel, this *Innuendo* is not ſufficient to aſcertain, that the Words were ſpoken of the Plaintiff, without ſhewing to whom the Words were ſpoken, and that Perſon was the Plaintiff's Son. 1 *Roll's Abr. fol.* 83. *pl.* 9.

10. Theſe Words were ſpoken to the Father of the Plaintiff, *thy Son hath murder'd my Child*, the Judgment was arreſted, becauſe it did not appear, that there was a Communication of the Plaintiff, nor was it averr'd that he was the only Son of the Father, to whom the Words were ſpoken. 2 *Cro.* 635. *Harvey* v. *Chamberlain.*

Of the Innuendo.

1. The Nature of an *Innuendo* is to explain Words that are ſomewhat doubtful, but yet that Matter thus explain'd by the *Innuendo*, muſt be Matter ſufficient to maintain the Action; but if the Words before the *Innuendo* do not ſound in Slander, no Words made Uſe of under the *Innuendo* ſhall make the Action maintainable; for it is not the Nature of the *Innuendo* to beget an Action. *Telv.* 21. *Barham* v. *Netherſall.*

2. Where the Plaintiff had declared, that he was produced as a Witneſs, and the Defendant ſaid, *that he was diſproved before the Juſtices of Aſſize by the Oath of Mr.* Kinnerſley, (Innuendo) *that he was diſproved in his Oath*; it was adjudged that the Action would not lie, for that the *Innuendo* could not ſupply ſuch an Intendment. *Moor* 407. *pl.* 547.

3. The *Innuendo* made Uſe of in the Declaration in this Action, is no more than as the Word *Prædict'*, and cannot make the Perſon or Scandal certain, which was uncertain before. 4 *Co.* 17. *b.*

4. Yet in the Caſe of *Wilner* v. *Hold*, where the Words were, *Thou art a Rogue and a Raſcal, and haſt killed thy Wife*, (meaning one *Elizabeth*, late Wife of the Plaintiff) it was adjudged that it ſufficiently appear'd the ſaid *Elizabeth* was dead, but then it is to be underſtood it was after a Verdict. *Cro. Car.* 489.

5. The Matter of the Action ſhall not be enlarged by the *Innuendo. Hob.* 2, 3. *Thomas* v. *Axworth.*

6. Where the Words were, *Thou haſt poiſon'd Smith, (quendam Samuelem Smith innuendo) adtunc defunct'*, this, without a *Communication* alledged, or any Averment, was held not good; for it doth not appear that he poiſon'd him willingly, nor that *Smith* was dead at the Time of the Words

ſpoken, and the *Innuendo* for that Purpoſe is no ſufficient Averment. *Hob.* 6. *Miles* v. *Jacob*. *Hob.* 8. 1 *Roll's Abr.* 77. *pl.* 7.

7. Where Words were ſpoken of the general Receiver of the Court of Wards in this Manner; Mr. Deceiver (*Innuendo* the Plaintiff) *had deceived and cozened the King, and dealt falſely with him, and I have him in Queſtion for it, and I doubt not but to prove it e'er long.* It was alledged, that it doth not appear by the Words ſpoken, that they were ſpoken of the Plaintiff; for Mr. *Deceiver* had no Propriety to that Purpoſe, and then the *Innuendo* will not make it certain, to which it was anſwer'd; that if a Man, looking upon three Perſons, ſhould ſay, *one of theſe three murder'd a Man*, no *Innuendo* will help this Incertainty, no more in the Perſon, than in the Matter of the Scandal. But here, in as much as it is ſaid, that at the Time of the Words, the Defendant had a Diſcourſe of the Plaintiff, here the Word *Deceiver*, tho' in Propriety it doth not import Receiver, yet the Alluſion and ironical Reſemblance of the Name doth very well bear the Application of the *Innuendo*; and if ſuch a ſlight Evaſion ſhould be admitted, it would be a common Practice to ſlander ſafely. *Hob.* 268. *Fleetwood* v. *Curle*.

8. But where the Declaration ſet forth, that the Defendant ſpoke theſe Words; *He*, (meaning the Plaintiff) *ſhewed me firſt a Bill of forty Pounds without a Seal*, (meaning the ſaid Bill) by the ſaid *E.* as aforeſaid *ſealed and delivered: And afterwards he ſhewed me the ſame Bill, with a Seal, and he*, (meaning the Plaintiff) *hath forged the Seal of the ſame Writing*, (meaning the Seal of the ſaid Bill, by the ſaid *E.* as aforeſaid, *ſealed and delivered*). Judgment was given for the Defendant, for the *Innuendo* was of no Uſe; for ſince the Words were only a Writing, which is utterly uncertain, an *Innuendo* will not change the Matter of Words, for that is by the *Innuendo* to make the Words otherwiſe than they were. *Hob.* 45. 1 *Brownl.* 9.

9. So where the Words were, **Thy Father is a Thief**, (*Innuendo* the Plaintiff) this *Innuendo* will not make the Declaration good, which was ill for want of a proper Allegation, that the Words were ſpoken to the Son of the Plaintiff, nor in his Preſence. 3 *Cro.* 92. *Phelps* v. *Lane*.

Other Caſes concerning the Innuendo.

2 *Show.* 285. *Jackſon* v. *Hall.*

3 *Bulſt.* 83. *Helly* and *Hender's* Caſe.

3 *Cro.* 442. *Slocomb's* Caſe.

3 *Cro.* 420. *Spencer* v. *Medburne and his Wife.*

W. Jones 376. *Anonymus.*

1 *Cro.* 496. *Johnes* v. *Davers.*

Brownlow 7.

Cro. Eliz. 297, 428, 609. 4 *Co.* 20. *Moor* 396. *pl.* 516. *Owen* 57.

1 *Roll's Abr.* 73. *pl.* 18. *Telv.* 21. *Noy* 155.

Cro. Eliz. 834.

Cro. Jac. 215, 343. *Cro. Car.* 489. 1 *Roll's Abr.* 77. *pl.* 6.

1 *Roll's Abr.* 85. *pl.* 7. *Hob.* 45. *Cro. Eliz.* 609.

Cro. Car. 236, 512. 1 *Jones* 409. 2 *Brownl.* 123.

Moor 401. 4 *Co.* 17. *b.* 3 *Lev.* 166.

Telv. 21. *Barham* v. *Netherſale.*

Of the Averment.

1. Where an Averment was held neceſſary in the Declaration, to ſhew that the Defendant was the Plaintiff's Servant at that Time, *Moor* 63. that there might be a ſufficient *deſignatio Perſonæ*.

2. Where a Declaration was held ill, becauſe it ſet forth, that the Defendant ſpoke ſcandalous Words, *tenor quor' ſequitur*, and then mentions the Words, and then ſays & *Conſimilia*. *Hall* v. *Cranfield*.

3. In charging the Defendant with ſpeaking Words of a *Merchant*, it is not good to ſay in the Declaration, that for many Years laſt paſt, the

Plaintiff hath been a *Merchant*, but it is proper to ſay at the Time the Words are laid to be ſpoken. *Cro. Eliz.* 794. *Dotter* v. *Ford.*

4. See where it was held ſufficient to ſay, that he is of ſuch a Trade, and for many Years paſt hath been, without ſaying laſt paſt. *Tuthill* v. *Milton, Yelv.* 158.

5. Where a Declaration was held inſufficient for want of ſhewing, that the Perſon to whom the Words were ſpoken was the Plaintiff's Father. *Gouldsb.* 187.

6. *Malitioſe* being omitted in a Declaration was held ſufficient, becauſe the Words appear'd to be ſo. *Mercer* v. *Sparkes, Owen* 57.

7. Where a Declaration for ſlandering of a Title, was held ill, becauſe it was not ſhewn that the Plaintiff had ſuſtained any Damage. *Smead* v. *Badley,* 2 *Cro.* 397.

8. Where the Words were, *He is a Maintainer of Thieves, and keepeth none but Thieves in his Houſe, and I will prove it*; this Declaration was held ill, and the Judgment reverſed upon a Writ of Error, becauſe it was not averr'd that he knew them to be Thieves. 1 *Cro.* 746. *Ball* v. *Bridges.*

9. So where the Words were, *Thou do'ſt ſerve falſe Warrants, and deceiv'ſt the People*; theſe Words were adjudged not actionable, for want of an Averment that he knew them to be *falſe Warrants.* 4 *Co.* 15. *a. b.* cited in the Caſe of *Waldgrave,* v. *Agas,* 1 *Cro.* 192.

10. Words alledged to have been ſpoken *in præſentia diverſorum ligeorum* hath been held good, without ſaying they were ſpoken *in præſentia & auditu.* 1 *Cro.* 487. *Hall* v. *Henneſley.*

11. An Action was brought by Husband and Wife, for Words ſpoken of the Wife, and they concluded to the Damage of both of them. And the Court held it well; but Juſtice *Wythers* was of the contrary Opinion; for he ſaid, if an Innkeeper's Wife be call'd *a cheat*, and the Houſe loſes its Trade, the Husband hath an Injury by the Words ſpoken of his Wife, but the Declaration muſt not conclude *ad dampnum ipſorum, &c.* 3 *Mod.* 120. *Baldwin* v. *Flower.*

12. Where the Words were, *Thou and Waterman did kill thy Maſter's Cook,* (meaning one *Tarnton,* late Servant of *Francis Dingley,* Eſq;) *and thou waſt never tried for it, and I will bring thee to thy Trial for it.* In this Caſe it was reſolved, that it need not be averr'd that the Plaintiff had a *Maſter*, and that *Francis Dingley* was his Maſter; for it being here alledged, that the Cook was Servant to *Francis Dingley*; it follows that *Francis Dingley* was his Maſter. *Bridg.* 60. *Cooper* v. *Smith.*

13. In *Winch* 70, 89. in the Caſe of *Potter* and *Browne* it is ſaid, that where the Words are, *he is as arrant a Thief as any in* England, the Plaintiff need not aver, that there are Thieves in *England*, for the Diſference is there ſaid to be when the Words relate to a particular Place; and when to the whole Kingdom, and ſo when the Slander is tied to one kind of Felony.

Where Averments have been held neceſſary in Declarations, and where not.

Firſt, Where Declarations have been held not good without **Averments.**

Hob 6. *Jacob* v. *Miles,* 1 *Roll's Abr. fol.* 77. *pl.* 6. Of the Death of *S.*

Noy 63. *Webb* v. *Poor, Cro. Eliz.* 569. 1 *Roll's Abr. fol.* 77. *pl.* 7. Of the Death of the Defendant's Aunt.

Stile 65, 66. ——— v. *Long.* Of the Death of the Defendant's Child.

1 *Roll's Abr.* 78. *fol.* 9. *Cro. Eliz.* 889. Of the Plaintiff's having Sheets at the Time of ſpeaking the Words.

2 *Bulſt.* 141. *Cro. Eliz.* 783. *Heath* v. *Poole.* The ſame Point.

Lit. 166. Of there being a little Boy then in the Houſe.

Cro. Eliz. 308. *Ball* v. *Roane.* Of there being a Robbery committed within forty Miles of *Wellingborough.*

Hob. 219. *Bland's* Caſe. That the Plaintiff was not indicted.

Cro. Jac. 687. *Heſter* v. *Browning.* That there was a Thief in *England* at that Time.

Hutton 70. *Potter* v. *Browne.* To the ſame Purpoſe.

1 *Roll's Abr. fol.* 79. L. G. *pl.* 2. That the Parties ſuppoſed to be ſuborn'd were examined in a Cauſe.

1 *Roll's Abr. fol.* 79. L. G. *pl.* 3. That Iſſue was joined, and that there was a Trial.

1 *Roll's Abr. fol.* 80. *pl.* 4. That the Plaintiff was Maſter to the Huſband of the Perſon to whom they were ſpoken.

1 *Roll's Abr. fol.* 80. *pl.* 8. That the Plaintiff's Mother had no more Sons.

1 *Roll's Abr.* 80. *pl.* 10. That the Plaintiff was ſufficiently deſcribed to be the Perſon ſpoken of.

Cro. Car. 420. *Spencer* v. *Medburne.* That the Plaintiff was Landlord to the Defendant.

1 *Roll's Abr. fol.* 84. *pl.* 2. *Delamere* v. *Hoskins.* Of the Identity of the Perſon of the Plaintiff.

1 *Roll's Abr. fol.* 84. *pl.* 3. *Potter* v. *Loveday.* The like Point.

Pl. 4. *Johnſon* v. *Dier.* The like Point.

Cro. Eliz. 889. *Brown* v. *St. John.* Of the Certainty whoſe Houſe was ſuppoſed by the Words to have been broken open.

Noy 116. *Wittam's* Caſe. That a Man was perjured.

Telv. 9. *Heake* v. *Moulton.* That there are Acts for which a Man is to be hanged, to ſhew, that it is a Slander to ſay a Man deſerves to be hanged.

Cro. Car. 40. *Love* v. *Plater.* That there are diſhoneſt Perſons, by which it may appear, that the Superlative Expreſſion of the Defendant relates to a Compariſon of a Thing exiſting.

1 *Brownl.* 13. *Bland* v. *Edmonds.* That ſuch a Perſon was indicted at ſuch a Place, becauſe the Defendant would have the Plaintiff indicted as that Perſon was.

3 *Cro.* 443. *Slocomb's* Caſe. That the Plaintiff was Brother to the Perſon to whom the Words were ſpoken.

177. *Shalmer* v. *Foſter and his Wife.* Of the Identity of the Perſon ſuppoſed to be kill'd.

Cro. Ja. 331. *Ratcliffe* v. *Michael.* Of a Fact before committed to which the Slander charged had Relation.

Secondly, Where Declarations have been held good without particular **Averments.**

1 *Roll's Abr.* 77. *pl.* 1. *Popham* 128. *Cro. Jac.* 423. *Bridg.* 68. Of the Identity of the Perſon.

Noy 55. *Elwin* v. *Moor.* That the Defendant had a Son.

Lit. Rep. 166. That the Perſon robbed had ſuch Goods.

1 *Syd.* 327. *Baker* v. *Morfue.* That *C.* had any Bull.

1 *Roll's Abr. fol.* 77. *pl.* 4. *Stile* 66. That *J. S.* had any Cook.

1 *Roll's Abr. fol.* 77. *pl.* 5. 2 *Bulſt.* 42. 1 *Vent.* 117. 1 *Syd.* 53. Of the Death of *J. S.*

2 *Bulſt.* 141, 142. How much the Defendant was then worth.

1. *Roll's Abr. fol.* 78. *pl.* 10. *Willet* v. *Sands* 1. Of the Death of R. H. *Noy* 116.

Cro. Eliz. 214. *Lacy* v. *Reynolds.* Of there being any Thief in *Warwick* Gaol.

Stile 221. *Winter* v. *Barnard.* That a Baſtard Child was drowned.

1 *Cro. Ja.* 443. *Browne* v. *Lane.* That the Plaintiff was the Defendant's Maſter.

1 *Roll's Abr. fol.* 80. L. *H. pl.* 3. That the Plaintiff was Landlord to *J. S.*

1 *Roll's Abr. fol.* 80. *pl.* 5. *Ellis* v. *Knight.* Of the Identity of the Perſon of the Plaintiff.

1 *Roll's Abr. fol.* 80. *pl.* 6. *Cro. Jac.* 107. That the Plaintiff had no more Brothers.

1 *Roll's Abr. fol.* 82. *pl.* 17. *Foxcroft* v. *Lacy.* That the Plaintiff was preſent when the Words were ſpoken.

1 *Roll's Abr. fol.* 85. *pl.* 5. *Allen* 7. That the Plaintiff was a Captain, or known by that Name.

1 *Roll's Abr. fol.* 65. *pl.* 2. *Hole* v.——That the Defendant was Under-Sheriff at that Time, the Matter being a Scandal to him without conſidering him in his Office.

1 *Roll's Abr.* 77. *pl.* 4. Without any Averment that the Plaintiff had ſuch a Cook ſuppoſed to be killed.

Cro. Eliz. 824. *Talbot* v. *Caſe.* *Cro. Jac.* 331. *Barons* v. *Ball.* To the ſame Purpoſe.

1 *Ventris* 117. *Philips* v. *Kingſton.* Of the Death of the Perſon ſuppoſed to be murder'd.

6. *Rep.* 126. 2 *Cro.* 687. *Yelv.* 54. *Winch* 87. 1 *Syd.* 53. To the ſame Purpoſe.

2 *Bulſt.* 42. *Billing* v. *Knight,* 1 *Syd.* 227. *Ball* v. *May.* That the Plaintiff was indicted.

Of the Plea, Replication, &c. *in this Action.*

1. Where an Action is brought for Words ſpoken by the Wife; tho' the Husband and Wife muſt be put in the Plea, for the ſake of Conformity; yet the Tenor of the Plea muſt be, that the Wife is not Guilty, otherwiſe it will be wrong. *Mordon* v. *Leedall,* 1 *Brownl.* 4. 6. *Smailes* v. *Belt and his Wife.*

2. Where Words were ſpoken of the Plaintiff by the Defendant, who was married to the Plaintiff before the Suit, that Matter was held a good Plea in Bar. *Raym.* 395. *Walſall* v. *Allen.*

3. Suſpicion of a Man's having ſtolen another's Plate, is not a Foundation for ſpeaking theſe ſlanderous Words; *Mr.* Plunkett *did ſteal my Plate out of my Chamber.* 3 *Cro.* 52. *Powell* v. *Plunkett.*

4. Where the Words were, *Thou haſt play'd the Thief with me, and haſt ſtolen my Cloth, and Half a Yard of Velvet,* and the Defendant juſtified that the Plaintiff was his Taylor, and that on ſuch a Day, &c. he deliver'd him a Yard and Half of Velvet, to make him a Pair of Hoſe, and he made them too ſtreight; by Reaſon whereof he ſpoke theſe Words, *Thou haſt ſtolen Part of the Velvet which I deliver'd you,* and traverſes the Speaking in any other Manner; this Plea was ill, becauſe he ſaid nothing of the Words *thou haſt ſtolen my Cloth*; and if the Plea and Traverſe do not confeſs the Words of Slander, the Traverſe is ill. 1 *Cro.* 239. *Johns* v. *Gittins.*

5. To an Action for theſe Words, *Thou waſt forſworn in the Leet, within ſuch a Manor,* the Defendant pleads, that the Plaintiff ſuch a Day was ſworn with others before the Steward, to preſent, &c. and they preſented, that ſuch a Ditch was not ſcowred *ad nocumentum,* &c. which was falſe; and on a Demurrer it was held an ill Plea, becauſe it did not ſhew that the Ditch was within the Juriſdiction of the Leet; and if not, it was no Perjury. *Cro. Eliz.* 492. *Wyld* v. *Cockman.*

6. Where Words were actionable at firſt, at the Time of ſpeaking them, there the particular Damage accruing afterwards, does not give the Cauſe of Action, and the Statute of Limitations is a good Bar. But where the Words at the Time of ſpeaking them are not actionable, but by Reaſon of ſpeaking them, the Party loſes his Preferment, or hath ſome particular Damage, there the Statute of Limitations was held to be no Bar. *Ray.* 61. *Saunders* v. *Edwards*, 1 *Syd.* 95. S. C.

7. Where a Juſtification was held good to an Action for the Slander of Perjury, ſetting forth Proceſs upon an Attachment in *London*, wherein the Plaintiff had ſworn, that 10 *l.* was due to him from the Defendant, which was found to the Contrary by the Jury. *Moor* 79. *pl.* 210. *Lucas* v. *Cotton.*

8. Where the Declaration was, that the Defendant ſaid of the Plaintiff, *he was perjured*, to which the Defendant pleaded, that the Plaintiff had brought an Action in the King's Bench againſt the Defendant, for that the Defendant ſaid, *the Plaintiff was perjured, and had cozened* John Sowgate, and that the Defendant had pleaded to all beſides theſe Words, *thou art perjured*, Not guilty; and to theſe Words, *thou art perjur'd*, juſtified, that the Plaintiff was perjured in making an Affidavit in the Star-chamber; and upon this Iſſue was joined, and it was found for the Defendant; but it was not pleaded that any Judgment was given upon it; *Yet it was held* a good Plea, but in *Treſpaſs*, it was ſaid it ought to have been averr'd, that it is the ſame Treſpaſs, and there ought to be *Judgment*, which the Defendant ought to relie on as an *Eſtoppell.* 2 *Brownl.* 123. *Jacob* v. *Sowgate.*

9. An Action was brought for theſe Words, *he is a raſcally Alderman, a fictitious Alderman, a Lampooner*, and avers, that a *Lampooner* is well underſtood to be a *Libeller.* The Defendant pleads a Recovery in a Former Action brought by the Plaintiff for the ſame, and laid in the ſame Manner, only no Interpretation is given for the Word *Lampooner*; in which Action the Plaintiff was Bar'd; and it was held, that the Plaintiff being once Bar'd in an Action for the ſame Words, he ſhall not recover by this with an Addition of a new Interpretation of the Word *Lampooner*. *Gardner* v. *Helvis*, 3 *Lev.* 248.

10. Where a *Juſtification* and *Traverſe* were held ill becauſe the Action was Tranſitory. 1 *Cro.* 153. *Bellingham* v. *Minors.*

11. Where a Matter was adjudged to be *traverſable*. *Kinnerſley* v. *Cooper*, *Cro. Eliz.* 168.

12. Where a *Plea* and *Traverſe* therein were adjudged ill, not confeſſing any Words of Slander. *Cro. Eliz.* 239.

13. Where a *Juſtification* contains Matter of Fact, there a general Replication is good, that the Defendant did it without any ſuch Cauſe; but where it contains Matter of Record, which is not bare Inducement to the ſubject Matter, there it is ill without a *Traverſe*. *Moor* v. *Savage*, 2 *Leon.* 81.

14. Where a Replication was held ill, for that it did not anſwer to the whole Subſtance of the Plea. 3 *Leon.* 269.

15. Where the Cauſe of the Juſtification relates not to all the Words, ſuch Juſtification is ill. 2 *Cro.* 676. *Hilſden* v. *Mercer.*

16. Where an Action was brought againſt a Counſellor at Law, for that he ſaid, *the Plaintiff was arraigned and convicted of Felony*, the Defendant Pleads, that upon an Attaint againſt the Jury he was their Counſel, and as ſuch did utter the Words in the Declaration, and ſo juſtifies, and it was held a good Juſtification. *Brook* v. Sir *Henry Mountague*, 2 *Cro.* 90.

17. A Juſtification muſt not anſwer as to Part, and be ſilent as to another Part; as where the Words were, *Thou art a falſe forſworn Man, thou wert forſworn at the Leet at* R. *and didſt procure others to be forſworn*, and

the Defendant juſtified, for that the Plaintiff being one of the Jury preſented that for a Nuſance which was none. This was held to be no good Juſtification either in Matter or Form; not in Matter, becauſe tho' a Man preſents a Thing that is not true in a Leet, yet he is not forſworn, becauſe he may do it upon Information, as Jurors in the Seſſions or Aſſizes; nor in From, becauſe he does not anſwer to the Procurement of others to be forſworn. *Moor* 537. *pl.* 701. *Wild* v. *Chapman.*

18. The Plaintiff declares for Words ſpoken in *London*, the Defendant pleads, he ſpoke the Words in *Eſſex*, and that at ſuch a Place, he had made an *Accord* with the Plaintiff of all Treſpaſſes, Actions, *&c.* in every Place, except at *London*, and had given him Satisfaction for them, and *traverſes*, that he ſpoke the Words in *London.* The Plaintiff replies, that he ſpake the Words in *London*, *prout*, *&c.* and traverſes, that he made ſuch an *Accord*, and the *Traverſe* taken in the Replication was held to be good, for the Place where the Words were ſpoken is not material; but when the Defendant by his Plea hath made the Place material, there the Plaintiff has his Election to maintain his Declaration, or may by general Words maintain his Declaration, and *traverſe* that which is falſly alledged in the Defendant's Plea. *Inglebath* v. *Johnes*, 1 *Cro.* 99.

Fourthly, **Of the Trial and Damages.**

1. From whence the *Venue* is to be awarded where there is a local Juſtification. *Ford* v. *Brooke. Cro. Eliz.* 261.

2. Where it was adjudged to be a Mis-trial, the *Venue* not being purſuant to the Juſtification. *Goldsb.* 28. *Bowyer*'s Caſe, *Cro. Eliz.* 468.

3. Where the Action was laid in *Suffolk*, and the Addition of the Defendant was *A. C. de C. in Com. Eſſex*, and the Words were alledged to be ſpoken at *C.* in the County aforeſaid, which was in the County of *Eſſex*, and adjudged a Mis-trial.

4. Where an Action upon the Caſe is brought for calling a Man perjured, it muſt be obſerved, that when the Plaintiff was indicted for the Perjury before the Action brought, the Action ſhall not be tried before the Indictment be determined; but if the Action upon the Caſe was brought before the Indictment, and afterwards he is Indicted, the Action upon the Caſe may be tried firſt. 1 *Syd.* 69. *Anonymus.*

5. Where the Court would not grant a new Trial in an Action of *Scandalum Magnatum*, tho' the Damages were exceeding great, *viz.* 4000 *l.* 2 *Mod.* 150. Lord *Townſend* v. Doctor *Hughes.*

6. It is ſaid in 2 *Salk.* 644. in an *Anonymus* Caſe, *Paſch.* 8 *W.* 3. *B. R.* that the Court never, or very rarely, grant new Trials in Actions for Words.

7. And where the Court would not do it, when the Damages were 800 *l.* for theſe Words, *Thou art a beggarly Raſcal, and go pay thy Debts*; ſpoke by the Sheriff of *London* of a wealthy Citizen of *London.* *T. Jones* 200. *Boulſworth* v. *Pilkington.*

8. Where an Action is brought for two Sets of Words, one whereof is actionable, and the other not, and entire Damages are given, the Judgment ſhall be arreſted as to the Whole. *Graves* and *Blanchett*, 6 *Mod.* 148. the ſame Point, 2 *Cro.* 424. *Loyd* and *Pearſe*'s Caſe.

9. But this muſt be underſtood, where the Words are laid to be ſpoken at different Times; for where Words are in Part actionable, and in Part not, and the Words are ſpoken at one and the ſame Time, and entire Damages are given, there the Jury ſhall be intended to have given Damages for thoſe that were actionable. *Jaxon* v. *Turner*, 3 *Cro.* 237, 328. 1 *Cro.* 282. 3 *Cro.* 236, 237. *Jaxon* v. *Tanner*, *Penſon* v. *Gooday*, 3 *Cro.* 327, 328. 3 *Cro.* 788. 1 *Roll* 576. *Moor* 142. 10 *Co.* 131. 1 *Roll* 239. 1 *Cro.* 282.

10. Where Words are ſpoken by Husband and Wife, for Words ſpoken by both, and the Action is confeſs'd, the Damages muſt be ſeverally aſſeſs'd. *Moore* v. *Moore and his Wiſe*. *Cro. Eliz.* 296.

11. Where an Action was brought for calling the Plaintiff Thief, and for procuring him to be indicted and impriſon'd for Felony until he was acquitted. It was held, that in as much as this was not only for Words, but likewiſe an Action upon the Caſe in the Nature of a Conſpiracy, it was out of the Statute of 21 *Jac.* 1. of no more Coſts than Damages, if the Damages are aſſeſs'd under 40 *s.* 3 *Cro.* 263. *Topſall* v. *Edwards*, 307. *Blizard* v. *Barnes*.

12. In the Caſe of *Lawe* v. *Harwood*, an Action for ſlandering the Plaintiff's Title to Lands was held clearly to be out of the Statute of 21 *Jac.* 3 *Cro.* 140, 1.

Of the Judgment and Execution.

1. Where the Plaintiff had brought an Action in the King's Bench for Words, and recovered, and brought another Action in the Common Pleas; and the Judgment in that Action upon a Writ of Error was affirm'd, the Court would not award Execution upon the firſt Judgment. *Moor* 418. *Matthew* v. *Wood*.

2. Where the Plaintiff declares for Words that are actionable, and the Defendant Juſtifies the Speaking of other Words, and traverſes the Words in the Declaration; and upon the Trial, the Jury find other Words ſpoken that are not actionable, the Plaintiff can have no Judgment. *Dyer* 118. *b. pl.* 79.

3. In the Caſe of *Boulſworth* v. *Pilkington*, *T. Jones* 200. an Execution *Fieri Facias* was taken out, returnable at a common Return, directed to the Sheriff of *Surrey*, and the Sheriff on the Return-Day, made a Return of *nulla bona*; upon which a *Teſtatum* iſſued, teſted the very Return-Day of the firſt *Fieri Facias*, and it was held to be good, and a Difference was taken between the Proceſs, which commands the Defendant's Appearance; for there the *quarto Die poſt* is to appear in, before which no new Proceſs can iſſue; but it is otherwiſe in an Execution. *Boulſworth* v. *Pilkington*, *T. Jones* 200.

Actions upon the Caſe on an Aſſumpſit.

1. This Species of Actions upon the Caſe, like all other Actions upon the Caſe, are *Actiones Injuriarum & contra Pacem*; and tho' a Debt for the Payment, of which a Promiſe is made, either expreſs, or by Implication of Law may be recovered by it; yet my Lord *Vaughan* tells us, that it is not the Debt certain that can be recovered by this Action, but only Damages ariſing from the Breach of the Promiſe, which cannot be known, until a Jury aſcertain what the Damage is. Therefore a Man could never wage his Law for a Demand uncertain; for he could not make Oath of paying that which he knew not what it was, as conſiſting in Damages. And tho' the Jury give in Damages regularly, the Money promiſed to be paid, yet that changeth not the Reaſon of the Law, nor the Form; for ſtill it is recover'd by way of Damages, and not as a Debt recovered, which ſhews, (*ſays he*) that this Action is much inferiour, and more ignoble, than an Action of Debt, which by the Regiſter is the Action of Property. *Vaughan* 101.

2. So that the Foundation of this Action ariſes upon the Breach of a Promiſe made to a Man, upon a Conſideration which is ſuperintended to be the Ground and Foundation of ſuch Promiſe, which then becomes a Contract, wherein the Party who makes the Promiſe muſt have *quid pro quo*, or otherwiſe the Contract is nude and void.

Having ſaid thus much in general of the Action, the Caſes in the Books are herein after inſerted under the following general Heads.

Firſt, **Of the Action it ſelf.**
Secondly, **By and againſt whom to be brought.**
Thirdly, **Of the Declaration.**
Fourthly, **Of the Plea, Replication, Rejoinder, Iſſue, Traverſe,** &c.
Fifthly, **Of the Trial, Evidence and Damages.**
Sixthly, **Of the Judgment and Execution.**

And as to the Action it ſelf, it will be proper, in Order to underſtand the ſeveral Circumſtances incident to this Action, to deſcend to the following Particulars. 1. The Conſideration. 2. The Promiſe. 3. The Breach, or Diſcharge of the Promiſe. 4. The ſeveral Acts of Parliament that have been made relating to this particular Species of Actions upon the Caſe.

Firſt, *Of the Conſideration.*

1. As the Conſideration in this Caſe, is the Ground and Foundation, upon which the Defendant himſelf expreſly makes, or the Law conſequently implies a Promiſe, for the Breach, for which he is to render Satisfaction to the Plaintiff in Damages; it is proper to be known, that this Conſideration may ariſe, and be created two manner of Ways; *Firſt* by ſome meritorious Act to be done by the Plaintiff for the Benefit of the Defendant; or *Secondly* by doing, or permitting ſomewhat to be done to the Plaintiff's Prejudice or Loſs. 10 *Co.* 102. *Hob.* 4, 5, 216. So that it is not abſolutely Neceſſary, that the Conſideration of a Promiſe import ſome Gain to him, that makes the Promiſe. But it is ſufficient, that the Party, to whom the Promiſe is made, doth forgo ſome Advantage or Benefit which he might have taken, as may be ſeen in the Caſe of *Preſton* v. *Toole*, *Cro. Eliz.* 74. 4 *Leon.* 110. *Webb*'s Caſe.

2. As if one Promiſes another to take up a Hogſhead of Wine out of one Cellar, and to lay it into another, no Action will lie for not performing this Promiſe, becauſe it was no Benefit to the Party who made the Promiſe: But if the Perſon who made ſuch a Promiſe, does once enter upon the Performance of it, he muſt do it in ſuch Manner as it ought to be done; becauſe, when I have accepted of a Truſt, that I had a Liberty to refuſe, it is but Juſt that I execute it, ſo as not to prejudice the Perſon who repoſed that Truſt in me; as if by laying down the Hogſhead in an improvident and careleſs Manner I ſtave it, an Action lies againſt me for it. *Coggs* v. *Barnard*, 1 *Salk.* 26.

3. And it was held, that the Caſe of *Pickas* and *Guile*, reported in *Telverton* 128. was not Law; where, if *H.* delivers Goods to *A.* and in Conſideration thereof, he promiſes to redeliver them, it was held that no Action would lie for the Redelivery of them, and that this Reſolution had always been grumbled at.

4. And the Caſe of *Heath* and *Low*, reported in 2 *Cro.* 667. where Money was delivered to pay over without Delay, it was held, that an Action would lie; for when a Man takes a Truſt upon him, he is bound to perform it; and the Caſe of *Riches* and *Bridges*, in 1 *Cro.* 883. ſeems entirely to join with the other two, to ſhake that Reſolution of *Telv.* where a Man received Money to pay another, and did not ſo do, it was held that an Action lies, for, in Regard he received it, it ſhall be intended that he had ſome Benefit thereby, (that is to ſay) that he had better Credit, by having it paid into his Hands, otherwiſe he would not have made ſuch a Promiſe.

5. Where Goods of a third Perſon are taken in Execution, and I promiſe, in caſe he will reſtore them, I will pay the Debt; that has been held to be a good Conſideration. *Salk.* 28 *Love*'s Caſe.

6. So where a Man promiſed another, that if he would accept him for his Debtor, for a Debt due from *A.* he would pay the Money, that was held a good Conſideration, not barely as a Promiſe on the Part of *C.* but the Judges conſtrued it a mutual Promiſe, and this without an Averment that *A.* was diſcharged. *Roe* v. *Haugh*, *Salk.* 29.

7. And this Conſideration is either executed or Executory; if the Conſideration be executed, and does not go along with the Promiſe, but is entirely paſt, and the Promiſe be merely ſubſequent, it is not a ſufficient Conſideration to ground a Promiſe upon, unleſs ſome Thing ariſes between the Parties, that is meritorious; as if one, in Conſideration that I have built him an Houſe, quitted him of a Treſpaſs, or ſuch like, promiſes me to do another Thing, or pay me ſo much Money; that has been held not a good Conſideration, becauſe there appears nothing but the Conſideration perfectly paſt, without any thing incident thereto to continue it.

8. As if the Leſſee hath ſpent a great deal of Money in Defence of his Title, and afterwards he in Reverſion, in Conſideration thereof, promiſes, that the Leſſee ſhall have another Leaſe after the Expiration of his Term; here in this Caſe it was adjudged, that the Conſideration was executed before the Promiſe. *Moore* v. *Williams*, *Moor* 220. *Caſe* 357.

9. So where a Man promiſes for ſome thing paſt, as becauſe another hath quitted him of a Treſpaſs, or in Recompence of a Treſpaſs before done, or becauſe he hath let his Friend have Wares, that he will pay him a Sum of Money, or do ſome thing elſe; this is ſaid to be a Conſideration perfectly paſt, and will not ſupport an *Aſſumpſit*. *Plow.* 5. 302. 1 *Roll's Rep.* 413.

10. So where the Plaintiff declared, that in Conſideration he had delivered, and given to the Defendant twenty Sheep, he promiſed to pay him five Pounds at the Day of Marriage; this was held a Conſideration paſt; and the Judgment was arreſted after a Verdict. *Jeremy* v. *Goochman*, *Cro. Eliz.* 442.

11. So where the Plaintiff declared, that in Conſideration, that the Plaintiff, by the Defendant's Appointment, had paid a little before 60 *l.* for a Debt of the Defendant, he promiſed to repay it on Demand; that Conſideration was held paſt, and the Judgment ſtayed. *Barker* v. *Hallifax*, *Cro. Eliz.* 741.

12. But where the Conſideration is paſt and executed, if ſomewhat appears from the Nature of the Conſideration that preſerves and keeps it ſubſiſting, it will be good; as in the Caſe of *Pearle* and *Unger*, *Cro. Eliz.* 94. where the Plaintiff was poſſeſs'd of certain Lands for a Term of Years; and in Conſideration he had occupied the Lands, and paid the Rent, the Defendant promiſed to ſave the Plaintiff harmleſs, and the Plaintiff is diſturbed by his Cattle being diſtrained, tho' the Occupation and Payment of the Rent is ſaid to be paſt, yet as the Plaintiff continued in Poſſeſſion, and was ſtill to pay Rent, that preſerved the Conſideration, and was held good. A Promiſe on a Conſideration executed is good, if there was a Duty before. 1 *Lev.* 198. *Johnſon* v. *Aſtell.* Where the Plaintiff declared, that ſuch a Day the Defendant was indebted to him in ſo much, and in Conſideration thereof, afterwards, (to wit) ſuch a Day the Defendant promiſed to pay, this is not a Conſideration paſt, but the Continuance of the Debt raiſes a Promiſe, and an Action. 1 *Roll's Rep.* 413. *Hodge* v. *Vavaſor*.

13. In ſome Caſes, where a Conſideration is paſſed and executed, the Law has ſupplied the Place of an expreſs Promiſe; as where a Man at the Requeſt of the Defendant, deſired T. to credit the Defendant with two Ton of Wine, and the Plaintiff gave his Bond for it, and was ſued

and paid; this was held a good Conſideration to ground an *Aſſumpſit.* 2 *Cro.* 18. *Boſden* v. *Thinn.*

14. So where the Plaintiff declared, that in Conſideration the Plaintiff had beſtowed Labour and Pains to reconcile Differences between the Defendant and *J. S.* and others, the Defendant promiſed to pay ſuch a Sum of Money, tho' it was alledged, that this was a Conſideration paſt and executed, and not ſufficient to ground a Promiſe upon; yet it was over-ruled, and held a ſubſiſting Conſideration, becauſe the Pains were taken at the Requeſt of the Defendant. *Stile* 465. *Hardres* v. *Prewd.*

15. So where it was, that in Conſideration that the Plaintiff, at the Defendant's Requeſt, by his Deed had given to the Defendant the firſt and next Avoidance, the Defendant on the 22d of *Auguſt*, promiſed to pay the Plaintiff 100 *l.* this Conſideration, tho' paſt, was held good, it being done at the Defendant's Requeſt, eſpecially being done to the Defendant himſelf, the Conſideration ſhall be conſtrued to continue. *Cro. Eliz.* 715. *Riggs* v. *Bullingham.*

16. So the Law appears to be in *Yelv.* 40, 41. in the Caſe of *Boſden* v. *Flud*, where the doing a Thing for the Defendant at his Requeſt, ſhall cauſe a ſubſequent Promiſe to be good, and the Conſideration in Conſtruction of Law ſaid not to be perfectly paſt. *Dyer* 272. 1 *Cro.* 282. *Beauchampe* v. *Meggin.*

17. Where the Plaintiff declares, that in Conſideration he had bought three Parcels of Land on ſuch a Day, the Defendant afterwards promiſed to make him a ſufficient Aſſurance; here the Conſideration was adjudged not to be abſolutely paſt, for the Aſſurance was the Subſtance of the Sale. *Cro. Eliz.* 138. *Warcop* v. *Morſe.*

18. That in Conſideration the Plaintiff would buy all his Wares at ſuch a Price, the Defendant promiſed he would leave off his Trade at ſuch a Place, held a good Conſideration. *Broad* v. *Jollyffe*, 2 *Cro.* 596.

19. Where the Under-Sheriff brought an Action, ſetting forth, that the Defendant, in Conſideration of ſix Pence given the Defendant, he promiſed to pay the Plaintiff 60 *l.* if he would execute an *Elegit*; held no good Conſideration, for he was bound to execute the Writ. 2 *Cro.* 103. *Bridge* v. *Cage. Noy* 111.

20. Where there are two Competitors for a Place of Under-Sheriff, and the one promiſed, that if the other would deſiſt, he would pay the Plaintiff 20 *l.* that was held a good Conſideration. 2 *Cro.* 612. *Parker* v. *Brown.*

21. A mere Stranger to a meritorious Act done to a third Perſon, cannot make a Promiſe applicable to himſelf; as where the Plaintiff declares, in Conſideration one *Parry* would permit the Defendants to ſue in his Name, they promiſed to pay the Plaintiff a Sum due from *Parry*, that was held no good Conſideration; but where a Promiſe was made to the Father, that in Conſideration he would perform ſuch a Cure, the Defendant promiſed to pay the Father ſo much, and the Daughter ſo much; there the Nearneſs of the Relation ſhall carry the Benefit of the Conſideration to the Daughter, and ſhe may bring an *Aſſumpſit.* 1 *Vent.* 6. *Bourne* v. *Maſon and others*, 1 *Ven.* 318. *Dutton* v. *Pool.*

22. Where the Defendant promiſed to pay the Plaintiff a Sum of Money, in caſe the Biſhop would abſolve the Defendant from an Excommunication, it was held a good Conſideration. *Curtis and others* v. *Collingwood*, 1 *Vent.* 297.

23. *Mich.* 6 *Car. B. R. Morgan*'s Caſe cited in *Hard.* 73. a Leſſee promiſed, in Conſideration the Leſſor would forbear to diſtrain his Corn unſhocked, he would pay his Rent that was due; adjudged to be no Conſideration, becauſe ſuch Corn is not diſtrainable. *Hard.* 73.

Where Forbearance of the Suit is the Conſideration, theſe three following Things muſt be obſerved.

1. The Forbearance muſt be general, or for a particular Time certain, and not for a Time uncertain.
2. If it be of a Debt, it muſt be for a Debt really due.
3. If the Conſideration be Forbearance of a Suit, it muſt be from a Suit in which the Defendant is chargeable, or the Perſon from whom the Debt is ſaid to be due.

To illuſtrate which the following Caſes are in Point.

As to the Firſt.

24. In *Moor*, Caſe, 1167. where the Declaration was, that in Conſideration the Plaintiff would abſtain from proſecuting the Defendant for a Debt, that he would pay it before ſuch a Feaſt; there, in as much as it was to forbear, and neither mentions whether it was a total Forbearance, or for a Time certain, it was held ill; but in the Caſe of *Linghill* v. *Broughton*, *Moor* 854. 1 *Cro.* 19. *Lutwich* v. *Huſſey*, 455. *Philips* v. *Sackford*, where the Conſideration was for a Forbearance for a reaſonable Time; it was held good, and that the Court ought to judge, whether it was a reaſonable Time or not.

And in the Caſe of *Mature* v. *Weſt*, 1 *Cro.* 665. where the Defendant was indebted to him in ſuch a Sum, in Conſideration the Plaintiff would give him a Day of Payment, the Defendant promiſed to pay, and then the Plaintiff alledges he gave him ſuch a Day, and the Defendant had not paid; this was held good.

Where the Declaration ſet forth, that the Defendant was indebted to the Plaintiff in Conſideration thereof, and that the Plaintiff would not implead the Defendant, the Defendant promiſed to deliver the Plaintiff 14 Quarters of Barley, was held good. *Moor* 685.

As to the Second.

25. This Difference muſt be taken where the Plaintiff promiſes to forbear the Debt, and where 'tis only to forbear a Suit; for where the Defendant's Husband was indebted to the Plaintiff, and died poſſeſſed of diverſe Goods which came to the Defendant's Hands; and the Defendant in Conſideration, that the Plaintiff would forbear the Debt for a certain Time, ſhe promiſed to pay it, this is a good Conſideration. 1 *Roll's Abr.* 22. *pl.* 23.

26. In the Caſe of an Executor, there has been a great Contrariety of Opinions both ways concerning this Conſideration of Forbearance, in the Caſe of *Johnſon* v. *Witchcot*; the Reſolution was that where the Executor promiſed, in Conſideration of Forbearance, there he ſhall be liable *de bonis propriis*, tho' he pleaded he had no Aſſets. 1 *Roll's Abr.* 24. *pl.* 33. in 9 *Co.* 94. It was ſaid, that the Executor might give it in Evidence; but in 1 *Ventris* 121. in the Caſe of *Davis* and *Wright and others*, it was reſolved that it is not material, whether the Defendant had Aſſets at the Time of the Promiſe or no; but it is reported, that the Chief Juſtice ſaid, if it had appear'd upon the Declaration, that there were no Aſſets, the Plaintiff would fail in his Action, *but ſurely none would ſet out with that in the Declaration.* 3 Leon. 67. 2 Lev. 20. 1 Ven. 152. 2 Lev. 3.

As to the Third.

27. See 1 *Bulſtrode* 44, 45. *Smith* v. *Jones*, where the Defendant was Husband to an Executrix, and the Goods of the Teſtator came to his Hands; and in Conſideration the Plaintiff would forbear to ſue him, he promiſed to pay a Legacy of ſeven Pounds; the Court held, that as the Defendant could not be ſued for this Legacy, the Promiſe made by him to pay the ſame is not good. *Moor* 691. *Rotheram* v. *Stibbing*.

28. *Note*; This was at a Time when the Judges held the Law to be, that an Executor was not chargeable with the Promiſe of the Teſtator, and Executors were not ſuable for the ſimple Contracts of the Teſtator;

but at length it came to be reſolved, that an Executor was ſuable for a Debt due by the Teſtator upon a ſimple Contract, becauſe it was a Duty certain in the Teſtator; *Legate* v. *Pinchion*, 2 *Cro.* 293, 294. but ſtill a Difference continued, where it was a Promiſe to do a collateral Act, and a collateral Promiſe not being a Duty, it was not performable by the Executor, but in the Caſe of *Fawcett* and *Charter*, in 2 *Cro.* 663. It was reſolved by the Lord *Hobart*, and all the other Judges of the Common Pleas, and by the Barons of the Exchequer, that there is no Difference, but in either of them the Action is maintainable againſt the Executors.

29. So where a Woman was Executrix, and promiſed to pay a Legacy, and had Aſſets, and died, and the Goods came to the Hands of the Huſband, and he ſuppoſing himſelf to be chargeable, promiſed the Legacy upon Forbearance; this was held no good Promiſe in 1 *Bulſtr.* 44. in the Caſe of *Smith* v. *Jones*, but the Law is now clearly otherwiſe, in 2 *Lev.* 3. in the Caſe of *Davis* v. *Reyner.*

30. Yet tho' there muſt be a Debt, it has been held in the Caſe of *Wollaſton* v. *Webb*, that it need not be ſet forth in the Declaration, how the Debt accrued; for as the Day given is the expreſs Conſideration, that Debt is allowed in the actual Promiſe; but otherwiſe where the Debt it ſelf is the Conſideration of the Promiſe. *Hob.* 18.

31. If a Man be arreſted upon a void Arreſt, and another, in Conſideration of ſetting him at Liberty, promiſes to pay the Debt, there it is a Thing collateral; but if the Arreſt comes in Queſtion, the Action will not lie, but he muſt avoid it by ſpecial Pleading; for the Arreſt being unlawful, there is no Conſideration whereon to ground the Promiſe. *Godb.* 360. *Randal* v. *Harvey.*

32. *Mich.* 1651. *B. Hummers* v. *Hunton*, Action upon the Caſe for a Promiſe; ſetting forth, that the Defendant's Son died indebted to the Plaintiff, and the Defendant being his Mother, (but does not ſay ſhe was Executor or Adminiſtrator to him, or that ſhe had any Effects of her Son's in her Hands) promiſed, if the Plaintiff would forbear to ſue for his Debt, that ſhe would pay it. This was adjudged to be no Conſideration, becauſe ſhe was not liable to any Suit; ſo that the Plaintiff had no Prejudice by ſuch Forbearance. *Hard.* 73.

33. In Conſideration, that the Plaintiff would endeavour to perſwade another to marry her, ſhe would pay the Plaintiff 40 *l.* this was held a good Conſideration, and the Delaration good, without ſhewing what Means he made uſe of. *Ray.* 400. *Aglionby* v. *Towerſon*, reported in 2 *Show.* 95. by the Name of *Kirby* v. *Towerſon.*

34. But where the Conſideration was, that the Plaintiff ſhould conſent, and would not hinder the Defendant from marrying ſuch a Perſon, the Declaration is ill, if no Conſent is ſhewn, and the Place where. 2 *Lev.* 227. *Chapman* v. *Fothergiſt.*

35. Where the Conſideration was, that the Plaintiff would give her Conſent to the Marriage of the Daughter, and Heir Apparent to her Huſband, it was held a good Conſideration: For that the Mother hath, by the Law of Nature, an Affection and Intereſt in the Daughter; and the Confidence that the Daughter is ſuppoſed to have in her Counſel and Direction, was conſtrued a Means to incline the Daughter's Mind, either one way or other, and the Deſire of her Conſent ſhews, that the Plaintiff conceived it was; and therefore it ſhall be preſumed of great Importance to him to have it, and conſequently that it was a ſufficient Conſideration. *Griſley* v. *Lother*, *Hob.* 10. the ſame Caſe is reported in 1 *Brownl.* 18. and in *Moor* 857. And *Note*; in the Margin of the Caſe in *Hobart*, it was ſaid, *the Husband being her Father, who legally hath the Power over the Child, and not the Mother, was alive at the Time of the Promiſe; but yet her Power is alſo great in Nature.*

For Conſiderations touching Executors and Adminiſtrators, ſee hereafter concerning Actions by and againſt Executors and Adminiſtrators.

What

What have been held good Conſiderations.

1 *Roll's Abr.* 19. *pl.* 6.
Raymond 203, 204. } Relating to a Conſideration ariſing from Forbearance of a Suit, or the Time of *Payment of Money.*

1 *Roll's Abr.* 19. *pl.* 7. The Delivery of Goods to the Defendant.

pl. 8. To the Delivery of a Pawn to the Defendant.

pl. 9. The Mother's Conſent to the Marriage of her Daughter.

Godb. 216. The Plaintiff's procuring her Maſter to permit the Defendant to have a Shop in his Houſe.

Hutton 39. *Moor* 857. *pl.* 1176. 1 *Brownl.* 18. *Hob.* 10. The Plaintiff's procuring the Conſent of the Leſſor, that the Leſſee might aſſign his Term.

1 *Roll's Abr.* 20. *pl.* 10. The Plaintiff's promiſing that ſhe would permit her Son to ſerve the Defendant.

pl. 11. The Forbearance to ſue, tho' the Plaintiff had but a qualified Power of ſuing the Defendant.

pl. 14. Plaintiff's ſelling Goods to *B.* upon a Promiſe, that if *B.* does not pay for them, the Defendant will.

1 *Roll's Rep.* 354. 3 *Bulſtr.* 162. 1 *Roll's Abr. fol.* 20. *pl.* 15. 1. Plaintiff's paying Money due upon a Bond, by Plaintiff and Defendant, upon a Promiſe, that the Defendant would pay a Moiety.

1 *Roll's Abr. fol.* 21. *pl.* 17. The Payment of the principal Sum due, upon which the Plaintiff promiſed to ſtay a Suit againſt *C.* the Coobligee, againſt whom he had Judgment.

fol. 21. *pl.* 18. 1 *Brownl.* 31. *Hob* 250. Plaintiff's agreeing not to ſue out Adminiſtration during the Minority of the Infant.

Moor 685. *pl.* 946. *Holt* v. *Tilcock*, 1 *Leon.* 240. *March* 55. But if the Wife was entitled to the Adminiſtration, ſuch Promiſe is not a good Conſideration.

1 *Roll's Abr. fol.* 21. *pl.* 19. That the Wife of the Plaintiff would not hinder the Purchaſe.

fol. 22. *pl.* 24. That *A.* would pay 30. *l.* for a Bond of 60 *l.* enter'd into by a Stranger, the Defendant promiſed to deliver it up. 1 *Leon.* 238. *Cro. Eliz.* 194. *Cro. Car.* 8. *Hutton* 76. 101. 1 *Lev.* 198.

1 *Leon.* 61. *Gill* v. *Horwood.* That the Plaintiff promiſed the Defendant, he would forbear to ſue him for a ſmall Time, and the Caſe of *Brook* and *Dowſe*, in 1 *Roll's Abr. fol.* 23. *pl.* 25. reported in *Cro. Car.* 241. by the Name of *Cooke* v. *Dowſe*, hath been denied to be Law. *Gouldſ.* 48. *Cro. Car.* 250. 1 *Bulſtr.* 91. 3 *Leon.* 200. 2 *Roll's Rep.* 368. *Cro. Eliz.* 19. 1 *Syd.* 45.

fol. 23. *pl.* 30. The Defendant being in Arrear in ſeveral Sums to the Plaintiff, if he could not prove in a ſhort Time he had paid it, he would pay it, and the Defendant did not prove it in a Year.

fol. 24. *pl.* 31. That *B.* will pay Half the Reckoning at a Publick Houſe, the Defendant an Executor would pay 10 *l.* which was due upon a Bond, where *B.* was a Co-obligor with the Teſtator, and a good Conſideration.

fol. 25. *pl.* 37. The Delivery of an Inquiſition, where the Plaintiff had no Title to an *Elegit*, and a Promiſe to redeliver.

fol. 26. *pl.* 38. The Accepting a Leaſe at 10 *l.* a Year, and the Defendant promiſed to dreſs his Meat at 2 *d. per* Joint, and find other Neceſſaries for him.

fol. 27. *pl.* 41. That the Sheriff will execute a Writ without any Fee, the Defendant promiſes to pay him a certain Sum.

fol. 28. *pl.* 44. That the Plaintiff will forbear a Suit for a reaſonable Time. *Hutton* 108. *Lit. Rep.* 304. 1 *Syd.* 45. 1 *Bulſt.* 92. *Moor* 853. 1 *Roll's Rep.* 379.

Fol. 27. *pl.* 45. That the Plaintiff would forbear to ſue a Stranger, with an Averment that he did, and yet does forbear. 1 *Syd.* 45. *Hob.* 219. *Popham* 183. 1 *Leon.* 118. *Godb.* 72. *Cro. Jac.* 683. *Hutt.* 46. *Cro. Eliz.* 455.

Fol. 27. *pl.* 46, 47. That the Plaintiff will forbear to ſue a Stranger for a little Time, with an Averment of a certain Time of Forbearance. So where a Man is under an Arreſt, and the Plaintiff diſcharges him, upon the Defendant's Promiſe to pay, *&c.*

Fol. 27. *pl.* 50. That *D.* had Lead Oar delivered to him by *C.* Adminiſtrator of *B.* who ſold it to the Plaintiff.

Fol. 28. *pl.* 53. That the Obligor will pay the Money to deliver up the Bond.

1 *Roll's Abr.* 28. *pl.* 54. The Payment of a leſſer Sum for a greater, and a Promiſe to releaſe and acknowledge Satisfaction on Record. *Moor* 412. *Cro. Eliz.* 409.

pl. 55. Payment of the Conſideration of one of the Bail, againſt whom the Plaintiff had an Execution, and a Promiſe to aſſign the Bond, and diſcharge him from the Execution.

pl. 57. That the Plaintiff would forbear to ſue the Heir upon the Bond of his Anceſtor. 4 *Leon.* 6. 3 *Leon.* 67, 68. 2 *Saund.* 136. 1 *Ven.* 159. 1 *Syd.* 31. 1 *Lev.* 165.

pl. 59. *A.* promiſes, that if *J. S.* ſhall win a Game at Buts of *B.* Twenty-one up, that *A* will pay *B.* 20 *l.* if not then *B.* promiſes to pay *A.* 20 *l.* 2 *Leon.* 154. *Moor* 549.

pl. 60. That the Plaintiff will accept of the Defendant to be his Debtor for another, he being in Debt in the ſame Sum to the Plaintiff's other Debtor. 1 *Vent.* 153. 1 *Ven.* 15. *Stile* 249. *Hard.* 73. 1 *Saund.* 210. 1 *Lev.* 262. 1 *Jones* 87. 1 *Lev.* 248. 2 *Ven.* 71.

3 *Leon.* 105. *Brett* v. *Peggrim*, an Award ſubmitted to, and amongſt other Things, the Abitrators were going to order the Delivery up of two Bonds, that at the Requeſt of *B. A.* permits the Delivery of the two Bonds to be left out of the Award, and *B.* promiſes to deliver them up.

1 *Leon.* 297. *Tooly* v. *Preſton.* That the Plaintiff ſhould deliver the Defendant a Recognizance, and the Defendant promiſes to return it within ſix Days, or pay 1000 *l.*

Cro. Eliz. 67. That the Plaintiff ſhall ſhew the Defendant a Deed, by which it may appear, that ſo much Rent is due; the Defendant promiſed to pay it, who was an Aſſignee, *Sturlyn* v. *Albany*; yet it is ſaid, if the Money had been due by Bond, and there had been a Promiſe to ſhew the Bond, it had not been good ——— *Cro. Eliz.* 150. *Cro. Car.* 70.

1 *Leon.* 192. *Rockwood* v. *Rockwood.* The Father being ſick, declares his Intention to grant a Rent out of his Lands to *B.* his younger Son; *A.* the Eldeſt, in Conſideration he would not charge the Lands, promiſes to pay the Rent.

1 *Leon.* 220. *Poyne* v. *Plain.* In Conſideration that the Plaintiff, who had an Execution ready to be executed upon the Goods of *J. S.* would deliver the Goods to the Defendant, he promiſed to pay ——— altho' the Goods were not liable to the Execution.

Cro. Eliz. 883. *Riches* v. *Bridges.* In Conſideration that *A.* will deliver twenty Quarters of Corn to *C.* which *A.* owes *B. C.* promiſes to deliver the ſame to *B.* at a Day to come. *Telv.* 4. 128. *Con. Telv.* 50.

Hutt. 63. *Bawtry* v. *Scarlet.* In Conſideration that *B.* would order his Attorney to confeſs a Judgment, *C.* promiſed that Judgment ſhould not be enter'd.

Cited in 2 *Roll's Rep.* 495. In Conſideration that the Plaintiff would not take out an Execution upon a Judgment that happen'd to be erroneous, the Defendant promiſed to pay, *&c.*

1 *Syd.* 89. *Siot* v. *Stevens.* That the Plaintiff would forbear to ſue the Defendant, being an Executor for a Legacy. 1 *Roll's Rep.* 27. 1 *Ven.* 40. 1 *Lev.* 272.

Owen 123. *Meres* v. *Conham.* That the Plaintiff had delivered to the Defendant a Thing pawn'd to him.

Popham 192. *Anonymus.* That the Plaintiff would do and perform all the Plaintiff's lawful Commands, *&c.*

48. *Batterſey*'s Caſe. That the Plaintiff would keep a Priſoner all Night, that the Defendant had arreſted: Defendant promiſed to ſave him harmleſs.

What Conſiderations have been held inſufficient.

1 *Roll's Abr.* 18. *L. U. pl.* 1. A Promiſe by the Mother, in Conſideration of Forbearance, to pay the Debt of an Infant that was not liable.

But this Caſe is reported in *Owen*, that the Infant gave a Bond, and that the Defendant being his Executor, promiſed to pay the Money; and this Caſe is cited in *Popham* 178. to be adjudged contrariwiſe. *Cro. Eliz.* 126.

1 *Roll's Abr.* 18. *L. U. pl.* 2. Forbearance to ſue an Infant upon a Bond, held no good Conſideration; but adjudged to the Contrary, in 3 *Leon.* 164. *Edmond*'s Caſe. 4 *Leon.* 5. S. C. *Godb.* 158.

1 *Roll's Abr.* 19. *L. U. pl.* 3. Where a Promiſe by a Feme Covert was void, yet an Action lay againſt *D.* who undertook, that the Feme Covert ſhould perform it.

1 *Roll's Abr.* 19. *pl.* 4. Money paid by an Infant, and in Conſideration thereof, *A.* Promiſes to build him an Houſe; this is no good Conſideration.

2 *Leon.* 205. *Foley* v. *Windham*, *Cro. Eliz.* 206. *Hob.* 216. In Conſideration of Forbearance of a Suit in Chancery, where it was not held good.

1 *Roll's Abr. fol.* 19. *pl.* 12. In Conſideration of Forbearance to ſue where the Bill was aſſign'd, but the Property remain'd in the Aſſignor.

Palmer 185. *Potter* v. *Turnor.* *Winch* 7. The like Point where the Debt was due by Bond, and the Bond aſſigned.

fol. 21. *pl.* 16. *vide Moor* 468. Where the Father gave 90 *l.* with his Daughter, upon a Promiſe of her returning 10 *l.* back.

1 *Roll's Abr. fol.* 23. *pl.* 27. In Conſideration, that the Plaintiff would ſurrender up an Eſtate at Will, the Defendant promiſed to give him a Parſonage. 1 *Brownl.* 6. *Cro. Eliz.* 565. otherwiſe if there had been a Communication about this Leaſe at Will.

pl. 29. In Conſideration that the Plaintiff would make ſuch a Leaſe at Will to the Defendant, as Counſel ſhould adviſe.

Yelv. 184. *Smith* v. *Jones.* In Conſideration of *C.*'s forbearing to ſue *D.* who had married *B.* the Wife of *A.* for a Legacy bequeath'd by *A.* that *D.* promiſed, *&c.* *Cro. Jac.* 257. *Owen* 153. 1 *Bulſt.* 44.

1 *Roll's Rep.* 215. In Conſideration that *B.* to whom Goods were pawn'd, would forbear to ſell them for three Days, *C.* promiſes to pay, *&c.* and he does ſtay, *&c.*

Stile 305. In Conſideration, that the Plaintiff would not diſtrain the Corn in Shocks, the Defendant promiſed to pay, *&c.*

Tooley v. *Windham*, *Cro. Eliz.* 206. *Dyer* 272. *Hunt* v. *Baker.* *Godb.* 33. *Sidenham* v. *Worlington.* In Conſideration of Forbearance.

Dyer 328. *Mountford* v. *Catesby.* In Conſideration of the Defendant's quiet Enjoyment of Lands.

Yelv. 184. *Smith* v. *Jones.* In Conſideration of Forbearance, where the Defendant was not chargeable.

1 *Cro.* 200. *Fetherſton* v. *Hutchinſon.* Of letting a Priſoner go at large.

1 *Cro.* 537. *Grimſton* v. *Reyner.* In Conſideration of the Defendant's being indebted upon the Arrearages of an Account.

Godb. 13. *Anonymus.* In Conſideration of the Plaintiff's having granted to the Defendant a Term of Years in an Eſtate.

Anonymus. Of Forbearance, and does not aver he had given a Day.

Moor 710. *Caſe* 992. *Adams* v. *Dixon.* In Conſideration of the Plaintiff's having been Bail.

Moor 701. *Caſe* 974. *Bowes* v. *Powlet.* In Conſideration of Forbearance to ſue the Debt, being aſſigned to the King.

1 *Roll's Abr.* 25. *pl.* 36. *Weſtbee* v. *Cockaine.* In Conſideration that *B.* would pay *C.* 10 *l.* for which *B.* with *E.*'s Husband was bound to *C.* that *E.* promiſed to pay, &c.

Fol. 26. *pl.* 39. The Relinquiſhing a void Promiſe made by *A.*

pl. 40. That he ſhew'd the Defendant's Goods, and in Conſideration the Plaintiff would take them in Execution, the Plaintiff promiſed to ſave him harmleſs. *Cro. Jac.* 652.

Fol. 27. *pl.* 51, 52. In Conſideration that *A.* delivered Money to *B.* to pay to *C.* otherwiſe if *C.* had given *B.* a Day of Payment. *Cro. Jac.* 667. *Palmer* 281. *Telv.* 164.

3 *Leon.* 88. *Smith* v. *Smith.* In Conſideration that *A.* would commit the Education of his Children to *B.* and the Diſpoſition of his Effects, during their Minority, *B.* promiſed to procure Lands to be aſſured to one of the Children.

Moor 539. *Roſs* v. *Moor.* In Conſideration that the Plaintiff would relinquiſh his Suit. *Cro. Eliz.* 561. *Cro. Eliz.* 869. *Con.*

Owen 144. *Dogget* v. *Dowell.* In Conſideration of the Plaintiff's lending the Defendant Money, the Defendant promiſed to lend the Plaintiff Money, or forfeit 5 *l.*

Noy 140. *Oldfield's* Caſe, 1 *Brownl.* 3. *Moſe* v. *Canham.*

What other Conſiderations have been held good and ſufficient, and what not.

1 *Roll's Abr. fol.* 22. *pl.* 22.
1 *Roll's Rep.* 435.
1 *Ven.* 211, 212. *Evans's* Caſe.
Hard. 366. *Trever* v. *Roberts.*
4 *Leon.* 2. *Anonymus.*
1 *Keb.* 81, 82.
1 *Syd.* 323. } *Chapman* v. *Southwicke.*
1 *Lev.* 204. }
2 *Lev.* 33. *Woolnough and his Wife* v. *Weldon.*
Hutton 39. *Hall* v. *Woolen.*
1 *Cro.* 138. *Warcop v. Morſe.*
2 *Bulſtr.* 73. *Jones* v. *Clarke.*
1 *Cro.* 906. *Garnous* v. *Hodges.*
1 *Cro.* 660. *Keble* v. *Brown.*
Cro. Eliz. 747. *Glaſcok* v. *Duffeild.*
Godbolt 358. *Randall* v. *Harvey.*
Stile 416. *Pinchard* v. *Fowke.*
Stile 248. *Roſyer* v. *Langdale.*
395. *Boyle* v. *Scarborough.*
Moor, Caſe 974. *Bowes* v. *Powlet.*
1 *Cro.* 282. *Beauchamp* v. *Neggin.*
1 *Roll's Rep.* 413. *Hodge* v. *Vavaſor.*
Cro. Eliz. 125. *Ireland* v. *Higgins.*
700. *Sherwood* v. *Woodward.*
Cro. Eliz. 821. *Chadwick* v. *Sprite.*
883. *Riches* v. *Bridges.*
1 *Roll's Abr. fol.* 35. *pl.* 35.
fol. 22. *pl.* 21.
1 *Cro.* 149. *Boyle* v. *Bagſhaw.*
Telv. 128. *Pickas* v. *Guile.*
164. *Brand* v. *Liſley.*
Cro. Eliz. 218. *Burde* v. *Plain.*
Cro. Eliz. 880. Lady *Shandos* v. *Simpſon.*
Telv. 11. *Gurnos* v. *Hodges.*
Cro. Eliz. 466. *Clifton* v. *Gibbon.*
470. *Knight* v. *Ruſhworth.*
Hob. 105. *Lampleigh* v. *Brathwaite.*
1 *Cro.* 178. *Drabridgecourt* v. *Smalbrook.*
1 *Cro.* 654. *Stanton* v. *Suliard.*
Cro. Eliz. 849. *Rippon* v. *Norton.*
Telv. 19 *Jenniugs* v. *Hartley.*
Hard. 73, 74. *Reynolds v. Proſſer.*
9 *Co.* ——— *Bane's* Caſe.
Godb. 159. *Caſe* 220. *Anonymus.*
1 *Roll's Rep.* 27.
Godb. 358. *Randall* v. *Harvey.*
2 *Brownl.* 279. *Rivet* v. *Down.*

Popham 177. *Goodwin* v. *Willoughby.*

Latch 141. S. C.

Palmer 441. S. C.

Hard. 73. S. C.

1 *Lev.* 222. 1 *Syd.* 337. *Downes* v. *Beck.*

Raym. 32. *Traverſe* v. *Meres.*

1 *Syd.* 242. *Quick* v. *Copleſton.*

Yelv. 164. *Brand* v. *Liſley.*

2 *Bulſt.* 41. Sir *John Pooley* v. Lady *Gilberd.*

Winch 7, 8. *Potter* v. *Turnor.*

3 *Bulſt.* 206. *Lurgin* v. *Broughton.*

1 *Leon. Caſe* 80, 61, 155.

1 *Roll's Rep.* 215. *Caper* v. *Dickenſon.*

2 *Cro.* 206, 207.

2 *Bulſt.* 278. *Chapman* v——

Gouldſb. 437. *Shutford* v. *Borough Barnaby.*

Owen 29. *Smith's* Caſe.

1 *Bulſt.* 44. *Yelv.* 184. *Smith* v. *Jones.*

Hutton 47. 3 *Bulſt.* 206. *Lingen* v. *Broughton.*

2 *Brownl.* 279. *Rivet* v. *Down.*

Yelv. 25. *King* v. *Hobbs.*

1 *Roll's Rep.* 413. *Hodge* v. *Vavaſor.*

1 *Roll's Rep.* 433. *Bereſford* v. *Goodrouſe.*

27. *Lane* v. *Mallory.*

Hob. 4, 5.

1 *Roll. Rep.* 193. *Saunders* v. *Eaſterbie.*

Hard. 71, 2, 3. *Reynolds* v. *Proſſer.*

Yelv. 10. *Goring* v. *Goring.*

19. *Jennings* v. *Hartley.*

1 *Keb.* 439. *Stonehouſe* v. *Bodvill.*

Yelv. 56. *Pickard* v. *Cottells.*

Cro. Eliz. 755. *Brett* v. *J. S. and his Wife.*

551. *Barrow* v. *Gray.*

Godb. 202, 290. *Hatch* v. *Capell.*

2 *Cro.* 273. *Bond* v. *Paine.*

Cro. Eliz. 644.

Yelv. 49, 50. *Game & Ux.* v. *Harvy.*

Moor, Caſe 505. *Sheffield* v. *Priſe & Ux.*

3 *Bulſt.* 222. *Hodge* v. *Vavaſor.*

Godb. 31. *Sydenham* v. *Worlinton.*

1 *Roll. Abr. fol.* 22. *Carter* 233.

1 *Leon* 147. 1 *Syd.* 18. *Stile* 295.

1 *Keb.* 866.

Cro. Eliz. 774. *Collins* v. *Mills & Ux.*

Secondly, *Of the Promiſe.*

In treating of the Promiſe, it is to be conſider'd; 1. That the Matter promiſed muſt be good and lawful; 2. Poſſible; 3. Certain, and of ſome Signification, and not Frivolous and Nugatory.

1. For if one promiſes to do a Thing that is unlawful, ſuch Promiſe is void; and therefore if one promiſes to do that which is in itſelf Maintenance, that Promiſe is void. *Hob.* 72. *Dyer* 356.

2. If a Sheriff for ten Pounds promiſes, that a Priſoner ſhall eſcape, this Promiſe is not good. 10 *Co.* 76, 102. *Dyer* 356. *Cro. Eliz.* 200. *Fetherſton* v. *Hutchinſon.*

3. A Promiſe to a Sheriff to ſave him harmleſs, on his making ſuch a one a ſpecial Bailiff at his Requeſt, is good. *Cro. Eliz.* 178. *Dabridgecourt* v. *Smalbrooke.*

But a Promiſe made to the Plaintiff, that if he would ſuffer the Defendant to go at large, he ſhould appear at the Return of the Proceſs, or pay ten Pounds, is good, and not againſt the Statute of 23 *H.* 6. but if the Promiſe had been made to the Sheriff, it would not have been good. *Cro. Eliz.* 190. *Milward* v. *Clerke*, becauſe the Plaintiff might diſpenſe with the Defendant's Appearance.

4. A Promiſe made to the Under-Sheriff, then in Poſſeſſion of Goods by an *Elegit*, that in Conſideration the Plaintiff, at the Defendant's Requeſt, would ſue out another Writ of *Elegit*, and deliver it to the Defendant, and authorize a third Perſon to receive the Goods, he promiſed to cauſe the Goods to be found by an Inquiſition, and to deliver the Goods to the Perſon ſo authorized; this Promiſe engages him againſt the Duty of his Office, and tho' a Part of the Promiſe be not unlawful, yet it depending on that Part which was unlawful, the Whole is Vicious. *T. Jones* 24. *Morris* v. *Chapman.*

5. If one, who is a Miniſter of Juſtice, promiſes to do a Thing that is unlawful in his Office, or another promiſes to ſave him harmleſs, in ſo

doing, ſuch Promiſes are void; as where *A.* had levied a Plaint in the *Stepney* Court againſt *B.* and a Precept to attach the Goods of *B.* was directed to *C.* the Bailiff. And whereas he had attach'd Corn in Shocks, and deliver'd them to *A.* to redeliver them at the next Court, *A.* promiſed to ſave him harmleſs, no Action lies againſt *A.* for not ſaving *C.* harmleſs, becauſe the Attaching the Corn in Shocks was unlawful; but if it had not been ſo, yet *C.* ought, as Bailiff, to have kept them, and not to have deliver'd them over to the Plaintiff. *Mead* v. *Bygott*, 1 *Cro.* 230.

6. But tho' the Conſideration be unlawful, yet in this Caſe, a Promiſe to ſave harmleſs from an Impriſonment done at the Defendant's Requeſt was held to be good; as where *A.* brought *B.* to a common Inn, of which *C.* was the Hoſt, and affirms to *C.* that he had arreſted *B.* by Virtue of a Commiſſion of Rebellion; and in Conſideration that *C.* would keep *B.* as a Priſoner, by the Space of one Night, *A.* aſſumes, and promiſes to ſave *C.* harmleſs, if *B.* recovers againſt *C.* in an Action of falſe Impriſonment, *C.* may have an Action againſt *A.* for tho' the Keeping *B.* was unlawful, it did not appear to *C.* to be ſo. *Hutt.* 55. *Fletcher* v. *Harcourt*, *Winch* 48. *Note*; this was upon *Non-aſſumpſit* pleaded; Q. whether it would have been good, if it had appear'd upon the Pleadings to be an unlawful Arreſt.

7. But if it appears, that the Act which is to be done is unlawful, upon the Face of it; as if *A.* in Conſideration that *B.* will beat *C.* promiſes to ſave *B.* harmleſs, that would be a void Conſideration, and conſequently the Promiſe built upon ſuch Conſideration would be void. *Hutton* 56. *Winch* 49.

8. So in the Caſe of *Allen* v. *Reſcous*, in 2 *Lev.* 174. this Promiſe was adjudged void, where the Defendant in Conſideration of 20 *s.* promiſed to pay the Plaintiff 40 *s.* if he did not beat *J. S.* out of ſuch a Cloſe.

9. But where the Caſe was, that *A.* having a *Fieri Facias* for 61 *l.* againſt the Goods of *B.* and deliver'd the Writ to *C.* to whom it was directed, and *A.* told *C.* that ſuch Woollen Cloths were the Wares of *B.* and liable to the Execution; and in Conſideration that *C.* would levy the Money upon thoſe Goods, *A.* would enter into a Bond to indempnify *C.* upon Requeſt; and *B.* having ſued *C.* and recovered in Treſpaſs upon an Action brought by *C.* againſt *A.* upon his Promiſe, it was held to be a good Promiſe. 2 *Cro.* 652. *Arundel* v. *Gardiner.*

10. If *A.* be ſued on a Bond, and I become Bail for him, and Judgment and Execution be had againſt me, and the Plaintiff promiſes me, that if I will pay him, he will aſſign me the Bond and Debt therein, and makes me a Letter of Attorney to ſue for it in my own Name; this is ſaid not to be a good Promiſe, and againſt Law, being as it ſaid Champerty. *Dixon*'s Caſe, *Mich.* 39 *Eliz. B. R. Cro. Eliz.* 538.

11. Yet ſee the Caſe where *A.* obtained a Judgment againſt *B.* in the Marſhal's Court, and afterwards, in Conſideration of Money in Hand paid by *C. A.* Promiſes to aſſign this Judgment to *C.* this was held a good Promiſe, for that it was lawful ſo to do, and a Letter of Attorney might be made to *C.* to take out Execution in the Name of *A.* which might be done without Maintenance. *Loder* v. *Cheſlin.* 1 *Syd.* 212. 1 *Keb.* 744.

12. And 'tis likewiſe proper to be known, that where-ever the Conſideration, which is the Ground of the Promiſe, or the Promiſe, which is the Conſequence or Effect of the Conſideration, be unlawful, the whole Contract is void. 1 *Bulſt.* 38.

13. A Promiſe or Bond, not to uſe a Trade in a particular Place, is void, if it be without a Conſideration; and if it be a general Reſtraint from uſing his Trade, it is void, tho' there be a Conſideration. *Prugnell* v. *Goſſe.* *Allen* 67. *Stile* 11. 2 *Bulſt.* 136. *Rogers* v. *Parry.*

14. Where *A.* promiſed *B.* that in Conſideration *B.* would procure *J. S.* to be preſented, and inſtituted to ſuch a Chapel, which is a Donative, and of the King's Gift, *A.* would pay *B.* 20 *l.* upon Requeſt; and *B.* ſhews that he did procure him to be preſented, *&c.* no Action lies againſt *A.* for the Breach of his Promiſe, becauſe it was Simony in its Nature, and Illegal. 3 *Cro.* 337, 353. *Muckaller* v. *Toderick.*

2. It muſt be poſſible to be perform'd.

1. As a Promiſe to go to *Rome* in three Days, is ſaid to be void; ſo if a Promiſe be, that a Man in *London* ſhall cover a Houſe in *Hampſhire*, while he is there at *London*, it is ſaid to be void, becauſe impoſſible. *Bend.* 59, 90, 139. *Bro. Action upon the Caſe*, 107.

2. So if *A.* the 9th Day of *May*, promiſes to ſtand to the Award of *B.* ſo that it be made before the 10th Day of *May* next, and that *A.* have Notice fifteen Days before; or if *A.* for good Conſideration promiſes to make an Eſtate of White-Acre in *D.* worth 10 *l.* a Year, whereas in Fact it is worth but five Pounds a Year; or if *A.* promiſes to be nonſuited in ſuch an Action, and there be no ſuch Action in Being; or if *A* promiſes to aſſure ſuch a Piece of Ground, and there be no ſuch Piece of Ground; in theſe and the like Caſes, ſuch Promiſes are void for the Impoſſibility. *Co. Lit.* 206. *b. Perk. Sect.* 735.

3. Yet where the Matter promiſed may be reduced to a Certainty, tho' it be upon a Condition that is impoſſible, the Promiſe ſhall be good; as where *A.* is indebted to *B.* in 10 *l.* and upon this *C.* promiſes *B.* that in Conſideration he will forbear *A.* till ſuch a Day, if *A.* does not pay him upon that Day, he himſelf will pay him upon that ſame Day; this is a good Promiſe, upon which *B.* may have an Action againſt *C.* for tho' *A.* had the whole Day to pay it, and then it was impoſſible for *C.* to pay it upon that Day, on Default of *A.*'s not paying it on the ſame Day; yet the Subſtance of the Promiſe being to pay in Default of *A.* and the Time limited being impoſſible, is void, and then it ought to be paid upon Requeſt, upon *A.*'s not paying it at the Day. 1 *Roll's Abr.* 15. *pl.* 6.

3. As to the Certainty.

1. Where a Man promiſes he will pay a Sum of Money, and does not ſay when, it is good enough, and muſt be paid preſently; ſo if a Man makes a Leaſe for Years, and ſays not when to begin, this is certain enough, and it ſhall be conſtrued to begin preſently. 10 *Co.* 76, 102.

2. But if *A.* promiſes *B.* to deliver him Goods, or make him a Leaſe, or the like, and no Time is ſet when it ſhall be done, the Promiſe is certain enough, but the Party has all his Life-time to perform it in. 6 *Co.* 3. 10 *Co.* 77.

3. If *A.* be about the Buſineſs of *B.* and *B.* promiſes *A.* that he will repay him whatever he lays out, this is certain enough. *Het.* 122.

4. If one in Conſideration promiſes to deliver Goods, in Conſideration the other promiſed to pay Money in a ſhort Time, this Promiſe is ſaid to be void for the Incertainty; ſo where *A.* ſells a Horſe to *B.* for the Price that *B.* ſhould value him at. 1 *Bulſt.* 92, 97. 2 *Cro.* 250.

5. Where the Plaintiff Declared, that in Conſideration of 40 *s.* paid the Defendant, he promiſed to deliver the Plaintiff twenty Quarters of Barley the next Seed-time; this was held a good Promiſe, and certain enough. *Godb.* 950. *Totnam* v. *Hopkins.*

6. If *A.* in Conſideration that *B.* will marry his Daughter, promiſes to give with her a Child's Part; and that at the Time of his Death, he will give her as much as to any of his Children, except his eldeſt Son, this is a good Promiſe; for tho' a Child's Part is in itſelf altogether uncertain, yet the Promiſe being to give ſo much as to any of his Children,

the Promiſe is certain enough, it being averr'd what the reſt of the Children had, except the Eldeſt. *Popham* 148. *Silveſter's* Caſe.

7. If *A.* promiſes *B.* all that *A.* recovers in ſuch a Suit, or upon a Compoſition upon ſuch a Bond, this is certain enough, becauſe it may be made ſo. *Morris* v. *Badger*, *Trin.* 9 *Jac.* 1. *Palmer* 168.

8. If *A.* in Conſieration that *B.* will marry his Daughter, aſſumes and promiſes to give to *B.* twenty *French* Pieces, this is a good Promiſe, for this, according to our uſual Speech, ſhall be intended *French* Crowns, which are the common Coin of *France*, and here known. *Trin.* 6 *Car.* between *Poynter* and *Pointer*. *Cro. Car.* 194. adjudged.

9. If the Plaintiff declares, that whereas there was a Communication between the Plaintiff and Defendant concerning the Bark of certain Wood; and that thereupon it was agreed, that the Defendant ſhould give to the Plaintiff two Shillings *per* Seam, for all the Bark of ſuch Wood, as the Plaintiff ſhould cut; and that thereupon the Defendant aſſumed, and promiſed to have ready upon a certain Day, Articles purporting the Agreement, and an Obligation for Performance thereof, &c. the Declaration is not good, becauſe not ſaid in what Sum the Obligation was to be; and a certain Sum cannot be intended, becauſe the Number of Seams are altogether uncertain. *Trin.* 17 *Car.* between *Pleaſe* and *Palſry*. 1 *Syd.* 270. *per Curiam*; but being after a Verdict upon the general Iſſue, it was adjudged for the Plaintiff; but *per Curiam*, upon Demurrer, or a ſpecial Iſſue, it had been naught. 1 *Keb.* 776. *Hob.* 69. 1 *Brownl.* 11. *Mod.* 70.

10. But if there be an Agreement to enter into an Obligation for Performance of a Thing of certain Value, without mentioning in what Sum, it ſhall be intended according to the Value. *Trin.* 17 *Car.* 1 *Syd.* 270. *per Curiam.*

11. In an *Aſſumpſit*, the Plaintiff declared, that the Defendant in Conſideration, &c. ſix Months before the Return of King *Charles* II. aſſumed to pay 20 *l.* to the Plaintiff, if *Charles Stewart foret Rex Angliæ infra* 12 *Menſes tunc prox' ſequent'* &c. *Paſch* 12 *Car.* 2. between *Andrews* and *Hern*; adjudged a good Promiſe, and that it ſhall be taken according to the ſubject Matter, *viz.* That the King, that was then out of Poſſeſſion, ſhould be in Poſſeſſion within ſix Months. 1 *Keb.* 56, 65.

There are two Sorts of Promiſes, Expreſs or Implied.

1. An expreſs Promiſe is where a Perſon promiſes, that he, or ſome other Perſon will pay a Sum of Money, build a Houſe, Seal a Bond, make a Leaſe, or ſuch like, for ſome Conſideration annex'd to ſuch Promiſe.

2. And an expreſs Promiſe will give an Action, when otherwiſe the Plaintiff muſt have had recourſe to ſo ſome other Action; as where a Box and Goods is deliver'd to a Man which he promiſes to diſpoſe of; 'tis no Plea for the Defendant to ſay, that the Defendant was the Plaintiff's Bailiff, and that therefore he ought to be charged in an Action of Account. *Wilkin* v. *Wilkin*. 1 *Salk.* 9.

3. And an expreſs Promiſe will lie for Rent, altho' there be a Leaſe. 1 *Lev.* 205. *Chapman* v. *Southwick.*

4. An expreſs Contract takes away the Contract implied by Law; as where an Action was brought againſt an Infant; and the Caſe was, that his Mother bound him to a *Ruſſia* Merchant, and the *Ruſſia* Merchant committed the Care of the Infant to the Plaintiff; the Action muſt not be brought againſt the Infant, but againſt the *Ruſſia* Merchant. *Allen* 94. *Duncomb* v. *Tickridge.*

5. An implied Promiſe is ſuch as is raiſed by Implication of Law upon the Nature of the Caſe, as where a Man ſells, and delivers Goods to another, tho' he cannot prove an expreſs Promiſe to pay for them, the Law will implie a Contract or Promiſe to pay for them; and where the Price is not aſcertained between the Parties, the Law implies that the

Defendant promiſed to pay for ſuch Goods, ſo much as they were worth; ſo if a Man ſets another to work, and no Price is agreed, nor no expreſs Promiſe to pay, the Law implies, that the Perſon, who ſets the Man to work, contracted with him, and promiſed to pay him ſo much as he deſerved.

6. The Father gave Goods to the Son, in Conſideration that the Son would pay the Plaintiff 20 *l.* this was held to be a good Promiſe, raiſ'd by Implication of Law, for if by any Intendment, there may be a Debt due to the Plaintiff, the *Aſſumpſit* ſhall be good; and tho' the Contract was not between the Plaintiff and the Defendant, yet there was a Contract, and the Goods were given for the Benefit of the Defendant; and here is a Promiſe made by Implication of Law to the Plaintiff, tho' there be not a Promiſe in Fact. *Stile* 296. *Starkey* v. *Mill.*

7. Where a Bargain is made, and Earneſt given, yet the Remainder of the Money muſt be paid on taking away the Goods, unleſs any other Time is appointed for the Payment of the Money; for the Earneſt gives the Vendee only a Right to demand ſuch Goods; but if he does not come in a convenient Time to fetch them away, and pay the reſt of the Money, the Contract is diſſolved. 1 *Salk.* 113. *Langfort* v. the Adminiſtrators of *Tyler.*

On implied Promiſes you may declare by way of a general *Indebitatus Aſſumpſit*, and here ſhall be inſerted the Caſes that have been adjudged where a general *Indebitatus Aſſumpſit* lies.

1. It is ſaid in *Salkeld*, that an Action upon an *Indebitatus Aſſumpſit* will lie in no Caſe, but where Debt will lie for the ſame Thing. 1 *Salk.* 23.

2. Where one receives Money to the Uſe of another, it will lie againſt the Receiver. 1 *Salk.* 24.

3. And where one pays Monies upon a Miſtake it will lie, or where the Defendant received the ſame by any Deceipt uſed to the Plaintiff. 1 *Salk.* 22. *Tomkins* v. *Barnet.*

4. As where a Man pays Money upon a Policy of Aſſurance, ſuppoſing that there had been a Loſs, when there was none, in ſuch Caſe, this ſhall be Money received to the Uſe of the Payer, becauſe the Money was paid on a Miſtake; the like, if it had been received by a Fraud in the Receiver. *Skinner* 412. *Tomkyns* and *Barnet*, 5 *W.* & *M.*

5. But where a Man pays Money knowingly on an illegal Conſideration, there the Party that receives it ought to be puniſhed for his Offence, but the Party that pays it is likewiſe *particeps Criminis*, and there is no Reaſon he ſhould have his Money again; as where a Man pays Part of the Money upon an uſurious Bond, he ſhall not have it back again, tho' by the Statute of Uſury he may avoid the Bond. 1 *Salk.* 22. *Tomkins* v. *Barnet.*

6. It lies on a Promiſe to pay 50 *l.* in Conſideration of a Note of 50 *l.* under a third Perſon's Hand delivered by the Plaintiff to the Defendant; for the Note being Evidence of a Debt having been due, the Parting with it is a good Conſideration. 1 *Salk.* 25. *Meredith* v. *Short.*

7. It lies not for Money due upon a Wager, becauſe it there becomes due in a collateral Reſpect; for to make that Charge good, there muſt be Work done, or ſome meritorious Act, for which Debt would lie. But it will lie againſt him who holds a Wager by him that won; becauſe it was at firſt a Gift on a Condition precedent; and the Caſt of a Die, or whatever elſe be the Proof of the Party winning it, veſts the Property in the Winner, if the Money be ſtaked down immediately. 5 *Mod.* 13. *Walker* v. *Walker.*

8. *A.* Promiſes *B.* that when *A.* receives 100 *l.* which *C.* owes, that he will pay *B.* 10 *l.* an *Indebitatus Aſſumpſit* will not lie on this Promiſe, otherwiſe if it had originally been the Money of *B.* *Skynner* 196. *Anonymus.*

9. An *Indebitatus Aſſumpſit* for Freight is good, without mentioning what the Freight conſiſted of. 1 *Ven.* 100. *Prior* v. *Sheers.*

10. It lies for the Lord of a Copyhold Manor, for a Cuſtomary Fine. *Cumb.* 151. 1 *Show.* 35.

11. It lies *pro opere & labore* in ſerving on a Commiſſion. *Cumb.* 186.

12. It lies againſt the Holder of Stakes upon a Wager. *Cumb.* 303. *Walker* v. *Walker.*

13. If a Man receives more Money from me in a Reckoning than he ought, or more for Fees than he ought to take, it has been held an *Indebitatus Aſſumpſit* will lie. *Cumb.* 447.

14. An *Indebitatus Aſſumpſit* lies not upon a corrupt Bargain, or for Money gain'd by a cheating Trick. *Cumb.* 341.

15. It lies for Money received to the Uſe of him named in the Policy; for Money paid as a *Præmium* on a void Policy. 1 *Show.* 157. *Martin* v. *Sitwell. Skinner* 412.

16. An *Indebitatus* will not lie for Rent; but ('tis ſaid) it was held to lie upon a perſonal Promiſe grounded upon a real Contract, and the expreſs Promiſe muſt be alledged and proved, 3 *Modern* 240. and the Party declared for ſo much for the Occupation of a certain Houſe; and where no certain Sum is reſerv'd, a *Quantum Meruit* will lie for the Occupation, *&c.* 3 *Mod.* 73. *Maſon* v. *Beldham.* See 2 *Show.* 135. *Pilkington* v. *Peach,* 3 *Lev.* 150. *Johnſon* v. *May,* *Q.* whether it is abſolutely Neceſſary to prove an expreſs Promiſe.

17. It lies for Money lent. 2 *Brownl.* 40. *Anonymus.* But it will not lie for Money lent to an Infant, tho' for Neceſſaries. *Salk.* 279. *Darby* v. *Boucher.*

18. It is ſaid in *Skinner* 326. in the Caſe of *Francam* and *Foſter,* that Ch. Juſt. *Holt* held, That where a Man agrees to pay ſuch a Sum at three ſeveral Days, he may not declare for this Sum till the Days are paſſed, but when the Days are paſs'd, a general *Indebitatus Aſſumpſit* lies: But if it be agreed, that upon Failure of Payment of any Part, then to pay the Whole. *Q.* If it lies not for the Whole. *Trin.* 7 *Geo.* 1. *Mod. Caſes in Law and Equity,* 56.

Of Mutual Promiſes.

1. Executory Contracts differ from mutual Promiſes, where one Promiſe is the Conſideration of the other, tho' in both Caſes ſomething is to be done by both Parties after the Time of making the Promiſe. In the Firſt, the Conſideration of doing an Act, is the Foundation and Ground for the Performance by the other; as where one, in Conſideration of a Thing to be done by me, promiſes to pay me Money, or do ſomewhat for me; now before I can have an Action for this Money, and for the Parties not performing what he was to do for me, I muſt aver, that I did that which I had undertaken to do, at the Time and Place appointed for that Purpoſe. But in the ſecond Inſtance, if another, in Conſideration that I promiſe to do ſuch a Thing, he promiſes to do another Thing for me, or to pay me Money at ſuch a Day, I need not alledge that I perform'd what I had promiſed, but I may have an Action againſt him for his not performing his Promiſe to me; becauſe the Conſideration and Foundation of his Promiſe to me was the Promiſe I made to him, and he accepted that as a Conſideration, and has a Right of Action againſt me for my Non-performance.

2. In *Aſſumpſit* upon mutual Promiſes, where the Plaintiff was to deliver Corn, and the Plaintiff had paid Part, and was to pay ſo much, the Reſidue, the Defendant pleaded, confeſſing the Bargain, but that the Defendant had not paid the Reſidue; the Plaintiff replied, that ſuch a Day he tender'd the Reſidue, but does not ſay where; held that it is immaterial; for there needed no Averment that he was ready, becauſe they were mutual Promiſes, and the Parties had mutual Remedies. *Cumb.* 256. *Mansfield* v. *Stephen.*

3. But yet where there are mutual Promiſes, if one Thing be the Conſideration of another, there a Performance is neceſſary to be averr'd; as where the Defendant agreed to pay the Plaintiff ſo much Money in ſix Months, the Plaintiff agreeing to transfer ſo much Stock, and the Plaintiff at the ſame Time gave a Note to transfer ſo much Stock, the Defendant paying, *&c.* the one muſt aver a Transfer, or a Tender, and the other Payment, or a Tender. *Salk.* 112. *Callonel* v. *Briggs.*

4. So where the Plaintiff promiſed he would pull down two Walls, and build an Houſe, and the Defendant promiſed to pay him 8 *l.* and then an Averment of mutual Promiſes; there the Plaintiff ought to have ſhewn he had pull'd down the Walls, *&c.* 1 *Ven.* 177. *Peter* v. *Opil.* 2 *Saund.* 353. 2 *Lev.* 23.—And in the following Caſe, the Ch. Juſt. *Holt* is ſaid to have laid down this Rule in Executory Contracts, if the Agreement be, that one ſhall do an Act, and for the doing thereof, the other ſhall pay, *&c.* the doing of the Act is a Condition precedent to the Payment, and the Party who is to pay, ſhall not be compelled to part with his Money, till the Thing be perform'd for which he is to pay. *Vide* 15 *Hen.* 7, 10, 6. 1 *Ven.* 177, 214. But upon this Rule there are two Diverſities.

Firſt, If a Day be appointed for Payment of the Money, and the Day is to happen before the Thing can be performed, an Action may be brought for the Money before the Thing be done; for it appears the Party relied upon this Remedy, and intended not to make the Performance a Condition precedent. 48 *E.* 3. 23. 7 *Co.* 10. *b.* 1 *Vent.* 147. 1 *Saund.* 319.

Secondly, Where a certain Day of Payment is appointed, and that Day is to happen ſubſequent to the Performance of the Thing to be done by the Contract, in ſuch Caſe, Performance is a Condition precedent, and muſt be averred in an Action for the Money; and ſo is 1 *Jones* 218. to be underſtood. *Vide Dyer* 76. *pl.* 30. *contra*, and 1 *Roll.* 414, 415. But theſe and ſome other Books which are contrary (*ſays the Book*) are not Law; for every Man's Bargain ought to be perform'd as he intended it; when he relies upon his Remedy, it is but juſt that he ſhould be left to it according to his Agreement; but on the Contrary, there is no Reaſon a Man ſhould be forced to truſt, where he never meant it. And therefore if two Men ſhould agree, that the one ſhould have his Horſe, the other, that he will pay ten Pounds for him, no Action lies for the Money till the Horſe be deliver'd; *vide Dyer* 30. *pl.* 203. 2 *Mod.* 33. was denied. Judgment *pro Quer'* in *C. B.* and now affirmed upon a Writ of Error in *B. R.* 1 *Salk.* 117. *Thorpe* v. *Thorpe*, *Lut.* 251, 252, 253.

5. Where it has been held, that upon mutual Promiſes, Performance need not be preciſely alledged by the Plaintiff. 1 *Lev.* 88. *Anonymus.* 1 *Roll's Rep.* 336. *Spaniſh Ambaſſador* v. *Gifford.* 2 *Mod.* 34.

6. Mutual Promiſes muſt be both binding, as well of one ſide as of the other. *Salk.* 21. *Harriſon* v. *Cage and his Wife*, and both made at the ſame Time. *Hob.* 88. *Nichols* v. *Rainbred.*

7. In an Action upon the Caſe, upon mutual Agreements, the Evidence was a Note, ſignifying that *A. R.* had bought of *H.* one hundred Pieces of Muſlin at 40 *s. per* Piece, to be fetched away by ten Pieces at a Time, and to be paid for as taken away; it was held that the Property in this Caſe is alter'd, and they remain only a Security for the Money, and that if they are not taken away in a reaſonable Time, the Party may have an Action for his Money, but cannot ſell the Goods; and tho' there be no actual Promiſe to deliver them, yet in as much as they were to be paid for when taken away, the Law implies a Promiſe to deliver them. *Trin.* 8 *W.* 3. *Knight* v. *Hopper*, *Skinner* 647.

8. Where there are mutual Promiſes, and one of the Parties dies, whereby the other Party could not charge the Executor on the Promiſe of the Teſtator, yet the Promiſe by the Survivor ſhall continue; as adjudged in the Caſe of *Bettiſworth* v. *Campion*, *Telv.* 133.

And here it will be Neceſſary to ſhew ſomewhat concerning the Notice and Requeſt.

Firſt, *As to the Notice.*

1. All Contracts being Executed or Executory: Executory, as where All, or Part of the Thing agreed upon is to come; as that if you ſhall build me a Houſe, or that if you bring me in ſo much Corn, by ſuch a Day, I ſhall pay you ſo much Money, or the like: Executed; as where you promiſe to pay me 20 *l.* in Recompence of a Houſe I have built at your Requeſt; or where you promiſe to ſell me your Horſe for 10 *l.* laid down and received.

2. In the Firſt of theſe Contracts, no Notice need be given. But in the Second, Notice muſt be given and alledged, that you have built the Houſe, or that you have delivered the Corn, *&c.* See 3 *Bulſt.* 44.

3. Where the Matter to be done doth reſt in the equal Knowledge of the Parties what is to be done, there no Notice need be given by the one Party to the other, what is done.

4. But where it is more in the Knowledge of him to whom it is to be done, there it is neceſſary that he give the other Notice what is done.

5. When it reſts upon a Matter to be done between the Parties themſelves, Notice is to be given to the Party who is to make a Payment of Money, upon an Act to be done by the other, to whom the Payment is to be made; but otherwiſe where 'tis to be done by a Stranger, for there he is to take Notice at his Peril. *Powle* v. *Hagger*, 2 *Cro.* 492.

6. Where a Duty doth ariſe upon a private Act of the Plaintiff, there Notice muſt be given of it before the Action can be brought; for elſe the Breach may be ſo private, that the Defendant by no Poſſibility can know it without Notice.

7. Where a Thing is to be done by a Stranger, and lies as much in the Knowledge of the Defendant as of the Plaintiff, he is not bound to give Notice to the Defendant, *March* 108. as where the Plaintiff ſold the Defendant Barley, who was to give him as much for it as any other did; the Declaration is not good, ſhewing that *J. S.* gave ſo much for it, without Notice of it; but if it had been that the Defendant was to give ſo much for it, as *J. S.* gave, it is ſaid that the Defendant ought to enquire of *J. S.* and no Notice is neceſſary. 2 *Cro.* 43. —— v. *Henning*.

8. In Caſe where a Penalty is to be recovered for the not doing the Thing, there Notice muſt be given. 1 *Cro.* 34, 385. 2 *Cro.* 492. 1 *Bulſtr.* 12, 13. *Hob.* 51. *Hut.* 80.

In what other Inſtances a Notice has been held Neceſſary, and where not, relating to

Cole's Caſe, *Cro. Eliz.* 97. A Promiſe to ſave harmleſs.

Cro. Eliz. 298. *Stafford* v. *Bottone.* Aſſurance of Lands.
834. *Eaſt* v. *Thoroughgood.* The Sale of Lands.

Yelv. 168. *Brenley* v. *Todd.* Marriage.

Allen 21. *Fyner* v. *Jeffrys.* Payment of Money in Conſideration of Forbearance.

Stile 184. *Johns* v. *Leviſton.* A Promiſe to enter into a Judgment for ſo much as Sir *J. H.* owed the Plaintiff.

Stile 53. *Tanner* v. *Lawrence.* A Promiſe to pay ſo much for every Cloth he ſhould buy for the Defendant. *Allen* 24. S. C.

Stile 74. *Parmiter* v. *Creſſey.* A Promiſe to deliver Wines.

2 *Roll's Rep.* 462. *Eykins* v. *Moor.* A Promiſe to ſave harmleſs.

1. *Leon.* 123. *Dollaby* v. *Haſſell.* A Promiſe being to pay what would content the Plaintiff.

Cro. Eliz. 132. *De Bavoy* v. *Haſſell*, ſignifying that the Plaintiff was content to take ſo much.

2 *Cro.* 432. ——— v. *Henning*. Relating to the Price of Barley, that the Plaintiff ſhould have of any Body elſe.

Winch 102. *Brown* v. *Ware* } The Payment of Money upon Re-
Haverleigh v. *Laighton*, 1 *Bulſt.* 12. } queſt.

Secondly, *As to Requeſt.*

1. In all Caſes, where the Ground of the Action is for a Debt, there the Law induceth the Promiſe, and the Requeſt is not iſſuable, nor Parcel of the Conſideration; ſo where there is a Right to a Duty in the Plaintiff before, there the general *licet ſæpius requiſit'*, &c. is ſufficient; but where the Requeſt makes it a Duty, there the Requeſt muſt be preciſely alledged. 2 *Cro.* 183. *Selman* v. *King and others.*

2. A Promiſe upon a Conſideration executed or paſt, unleſs 'tis grounded on a precedent Requeſt, 'tis not good; but where the Conſideration ariſes from the Requeſt, the Promiſe is good; as for Inſtance, when a Promiſe is made at the Time of the Requeſt, then the Conſideration is meritorious; as for Example, if I promiſe to pay 10 *l.* becauſe *W. R.* was Bail for my Servant, that is not good; but otherwiſe is it, if I promiſe to pay 10 *l.* becauſe the Plaintiff was Bail at my Requeſt *poſtea.*

3. Where Money is to be paid, or any other Thing to be done upon Requeſt, there muſt be a preciſe Requeſt alledged.

4. Alſo where the Action is founded upon a collateral Matter, and not for meer Debt or Duty, there the Requeſt is iſſuable, and ought to be expreſly alledged.

5. And ſo in all Caſes where Notice is to be given, or a Requeſt, or a Demand to be made, to produce and warrant the Action, the ſame muſt be ſet forth to be made and done accordingly. 1 *Cro.* 179, 280, 281. 2 *Cro.* 183, 652. 2 *Bulſt.* 229. 3 *Bulſtr.* 297, 327. *Yelv.* 66, 67. *Leon.* 73. *pl.* 159, 167.

6. Where a Requeſt is to be ſet forth, there it is Material and Traverſable, and therefore the Time and Place thereof muſt be certainly ſet forth.

7. Where in Conſideration the Plaintiff, at the Requeſt of the Defendant, would procure an Order to him, to pay another's Debt, that he would pay it; 'tis ſufficient to alledge that he procured an Order, without ſaying at the Defendant's Requeſt; but if the Agreement had been to procure an Order when the Defendant requeſted it, 'tis otherwiſe. 2 *Vent.* 75.

8. An Action upon the Caſe, upon a Promiſe to do a Thing upon Requeſt by an Executor, and alledged the Thing not done, *licet ſæpius requiſit'* by the Teſtator in his Life-time, and then alledges a ſpecial Requeſt by himſelf, is good; for the Ground of the Action is the Teſtator's Requeſt, which is well alledged, *Har.* 39. and in this Caſe, if the Plaintiff replies, that no Requeſt was made by the Teſtator, and upon this Iſſue the Jury find no Requeſt, yet the Iſſue and Verdict is good, and not repugnant to the Declaration, for the *licet ſæpius*, &c. is nugatory and ſurpluſage, and therefore void; and what is alledged afterwards contrary to it, is no real Contradiction. 1 *Hard.* 41.

9. In Conſideration that the Plaintiff would buy Land of the Defendant, and pay him 40 *l.* for it, the Defendant promiſed to pay the Plaintiff 9 *l.* which *J. S.* owed him; there this being a collateral Matter, a Requeſt ought to have been alledged. *Hill* v. *Wade*, 2 *Cro.* 523.

10. An Action upon the Caſe was brought againſt the Defendant, declaring that the Defendant promiſed, that his Son ſhould pay the Plaintiff ſo much Money for boarding him, when he ſhould be thereto required;

by *Roll* Ch. Juſt. this is a collateral Promiſe, and therefore the Requeſt muſt be averr'd to be made to the Son. *Stile* 207. ***Williamſon* v. *Mead.***

11. The Requeſt muſt purſue the Contract; as where the Defendant requeſted the Plaintiff to lend the Son of the Defendant 5 *l.* for ſix Months, and that at the End of the ſix Months, if the Son did not pay it, that then, at the End of the Year next enſuing the Lending of it, the Defendant would pay it to the Plaintiff, upon Requeſt; this Requeſt being made within the Year was held ill, for at the End of the Year the Defendant promiſed to pay, upon Requeſt. 2 *Roll's Rep.* 88. *Paſſerd* v. *Webbe.*

In what other Caſes under this Head a Requeſt is neceſſary, and where not, relating to the following Particulars, ſee the following Caſes.

Cro. Eliz. 85. *Deverly* v. *Welbore.* { The Delivery of Goods purſuant to
Cro. Eliz. 91. *Osbaſton* v. *Garton.* { Agreement.

Cro. Eliz. 229. *Applethwait* v. *Northy.* To a Marriage.
299. *Okes* v. *Kirby.* To Forbearance.

1 *Saund* 33. *Birks* v. *Trippett.* To the Payment of a Penalty or collateral Sum.

Cro. Eliz. 73. *Morris* v. *Kirke.* To a Promiſe to pay Money laid out and expended.

Noy 98. *Murton* v. *Burtley.* To an *Inſimul computaſſet.*

Wynch 2. *Bartlet* v. *Bartlet.* To an *Inſimul computaſſet.*

Brownl. 13. *Gore* v. *Calthorpe.* To collateral Matters that are not Duties.

Godb. 144. *Anonymus.* To Payment of Money for Labour to the Plaintiff's Content.

Godb. 437. *Caſe* 502. *Shutford* v. *Borough.* To a Promiſe to recompence the Plaintiff for Damage done to Sheep upon Requeſt, in Conſideration, the Plaintiff would not ſue, and would ſuffer the Defendant to carry away the Sheep.

Godb. 274. *Hill.* v. *Wade.* To a Promiſe of Payment of Money on Requeſt.

Stile 141. *Smithſon* v. *Wells.* To a Promiſe to ſave harmleſs.

Stile 172. *Harris* v. *Gibbons.* To a Promiſe to pay for all Wine and Hops ſpent at *Sturbridge* Fair.

Other Caſes concerning a Requeſt, *vide* 1 *Leon.* 129. *Caſe* 167. *Delaby* v *Haſſell.*
1 *Cro.* 454. *Phillips* v. *Sackford.*
Noy 95. *Alcock* v. *Blowfeild.*
1 *Brownl.* 13. *Gore* v. *Cathrop.*
2 *Brownl.* 279. *Rivet* v. *Down.*

And for more Caſes under this Head, ſee the Appendix hereafter.

Thirdly, *How a Promiſe muſt be performed, and how it may be diſcharged.*

Before we treat of the Performance of Contracts, it muſt be conſider'd, that Contracts and Agreements, wherein *Aſſumpſit* lies, are very much to be govern'd by the Rules of Equity, and therefore it is neceſſary to underſtand.

1. *That the Promiſe need not be purſued preciſely according to the ſtrict Letter, if ſo be the Performance be according to the Subſtance of it.*
2. *The Intent of the Parties is to be purſued, and if ſufficient Certainty does not appear in every Particular, the Law will make a Certainty by Conſtruction.*

3. *The Law muſt conſtrue the Intent of the Parties, where an expreſs Intent does not appear, moſt beneficially for the Party, to whom the Promiſe is made.*

For the Illuſtration of which obſerve,

As to the Firſt.

1. That if *A.* promiſes to convey Land to ſuch a Perſon as *B.* ſhall name, and he conveys it to *B.* himſelf, who accepts of it, this is a good Performance.

2. If one promiſes to another, in Conſideration of one hundred Pounds, to enfeoff him of a Piece of Land, upon Requeſt, and he to whom the Promiſe is made requeſts it, and the other refuſes, but afterwards, and before any Action, does it, which is accepted; this is a good Peformance, pleaded rightly. 1 *Bulſtr.* 38.

As to the Second.

3. If a Promiſe be for a Sale, or Delivery of Tods, Pounds, *&c.* it ſhall be taken and accounted, meaſured and reckoned, according to the Cuſtom of the Place. *Plow.* 41, 140.

4. Where *A.* promiſes he will make ſure to another a Portion of ſix hundred Pounds, by this it ſhall be taken that he Promiſes ſhe ſhall be worth ſo much. 3 *Cro.* 202.

5. If a Man promiſes to pay ſo much, when *J. S.* comes from *Rome*, it ought to be paid within a convenient Time after his Return. 1 *Roll's Rep.* 336.

As to the Third.

6. If one promiſes to pay Money, and no Time is ſet, the Law will conſtrue that it muſt be paid preſently; becauſe it is more for the Benefit of him to whom the Promiſe is made, that it ſhould be ſo. 10. *Co.* 76.

7. So if a Man for the ſame Reaſon promiſes to make a Leaſe for Years, and ſays not when it ſhall begin, the Law will conſtrue it to begin preſently. 10 *Co.* 33.

8. So if a Man promiſes to make a Feoffment, Surrender or the like, by this the Law will imply it was intended a good Feoffment, Surrender, *&c. Dyer* 23, 75.

9. If a Promiſe be made to enter into a Bond to pay Money, and no Sum is expreſs'd, the Sum is to be twice as much as the Money to be paid; and if it be to do another Thing, then it ſhall be a reaſonable Sum to be govern'd by the Value and Quality of the Act to be perform'd. 2 *Cro.* 652.

10. If a Promiſe be to give a Bond with Sureties, and ſay not what Sureties, nor in what Sum, the Court ſhall judge of the ſame. *Hob.* 79.

11. If a Promiſe be, that *J. S.* ſhall dwell in a Houſe during the Term, this ſhall be taken for the whole Term; but if the Promiſe be, that ſuch a one ſhall not do a Thing, it is thereby intended that he ſhall not do it at any Time during the Term. 2 *Bulſtr.* 136.

12. If one promiſes to deliver me Goods, and he delivers me bad Goods, this is a Breach of the Promiſe; for the Law will conſtrue the Intent of the Parties that they ſhould be good. *Dyer fol.* 75 *pl.* 23.

1. *As to the Performance.*

1. Where the Caſe was, that the Defendant, in Conſideration that the Plaintiff, at the Requeſt of the Defendant, had exchanged Horſes with him, he promiſed to pay him 5 *l.* The Defendant pleads, that the Plaintiff, before any Action brought diſcharged him of his Promiſe. It was adjudged, that as no Time was appointed for the Payment of the Money, it was due immediately upon Requeſt; and it not being paid, the Promiſe is broken, and the parol Diſcharge can't be pleaded. 3 *Mod.* 239. *Edwards* v. *Weeks.*

2. Where the Plaintiff declared as Executor of *A.* againſt *H.B.* that in Conſideration of two Weighs of Corn delivered by the Teſtator to the Defendant, he promiſed to pay, *&c.* Defendant pleads, that the ſaid two Weighs were drowned by Tempeſt; and in Conſideration that the Defendant would pay to the Plaintiff, for every 20 *l.* of the ſaid 10 *l.* 3 *s.* 4 *d.* *viz.* in the whole 33 *s.* 4 *d.* he diſcharged the Defendant of the Promiſe, and averr'd, that he was always ready, *&c.* held to be no good Plea. 1 *Leon.* 19. *Richards* v. *Bartlet.*

3. Where the Defendant promiſed to carry certain Apples for the Plaintiff in his Boat from *Greenwich* to *London*, and the Apples being in the Boat, in which they were by a great and violent Tempeſt ſunk in the River; it was held, that this Matter could not be pleaded in Diſcharge of the Promiſe. 4 *Leon.* 31. *Taylor*'s Caſe.

4. What held a good Diſcharge of the Damages by Acceptance of a Feoffment ſubſequent to the Promiſe, and before the Cauſe of Action, tho' not a Diſcharge of the Promiſe. *Wolverton and his Wife* v. *Davis.* 1 *Bulſtr.* 38.

2. *As to the Diſcharge.*

1. A Promiſe may be diſcharged by the Act of God, by the Act of Law, or by the Act of the Parties.

2. If a Man promiſes to appear at ſuch a Day, or the next Court or Term, and dies before, the Promiſe is diſcharged by the Act of God.

3. Where the Plaintiff declared, that the Defendant's Wife, in Conſideration that the Plaintiff lent her a Horſe to ride, *&c.* that ſhe promiſed to redeliver the Horſe upon Requeſt, *&c.* the Defendant pleads that his Wife was not requeſted before their Marriage, and that before the Requeſt alledged, the Horſe died, whereby he could not deliver him; held a good Plea; for a Promiſe that becomes impoſſible is dicharg'd. *Palmer* 548. *Williams* v. *Hide and his Wife.*

4. Where an *Aſſumpſit* was brought by Husband and Wife againſt *J. S.* Executor of *J. S.* the Plaintiff declared, that there was a Communication of Marriage between the Wife of the Plaintiff and the ſaid *J. S.* and that the ſaid *J. S.* in Conſideration ſhe would marry him, he promiſed, that if after the Marriage *J. S.* died, living the Wife, he would leave her worth 100 *l.* and it was held by *Hobart* Chief Juſtice, that by the Intermarriage, the Promiſe was extinguiſh'd by Operation of Law. 2 *Cro.* 571.

5. If one promiſes that *A. B.* ſhall marry me before ſuch a Day, and before the Day, he himſelf marries me, this Promiſe is diſcharged by the Act of the Parties. 21 *E.* 4. 23.

6. If one lets Land to another at my Requeſt to begin at a Day to come, and I undertake for the Payment of the Rent, and the Leſſee enters before the Day, which with an Expulſion would have work'd a Diſſeiſin, yet the Promiſe is good as to the Rent. 2 *Cro.* 684. *Brookbank* v. *Taylor.*

7. So if one Promiſes to pay Rent for ſuch a Perſon the Leſſee, and the Leſſor enters and ſuſpends the Rent, yet the Promiſe remains; for the Rent is not iſſuing out of the Land, but merely collateral. 1 *Leon.* 172. *Shirley* v. *Albany.*

8. If the Party that makes the Promiſe, and he to whom it is made, agree that a Bond ſhall be given for Money due upon a Promiſe, by this the Promiſe is diſcharged by Operation of Law. 2 *Leon.* 181. *Caſe* 223. *Freeman* and *Drew*'s Caſe.

9. If one promiſe to pay a Parſon Money in Lieu of Tithes, and the Parſon dies before the Tithes gather'd, the Promiſe is gone. 1 *Bulſt.* 111.

10. If one in Conſideration that another hath lent him a Horſe to ride a Journey, promiſes to redeliver, and before it can be done it is

taken away by the Owner, it is ſaid in *Yelverton* 22. in the Caſe of *Shelbury* and *Scotsford*, that this will diſcharge the Promiſe.

11. If an *Aſſumpſit* be to ſtand to an Award, and the Award be void, it diſcharges the Promiſe. 1 *Leon. Caſe* 170.

Fourthly, *The Several Acts of Parliament relating to this particular Species of* Actions upon the Caſe.

The Statute of Frauds.

1. The Act of 29 *Car.* 2. *cap.* 3. *ſect.* 16. hath much alter'd the Common Law as to Promiſes, *viz.* by that Act it is provided, "That after the 24th "of *June*, to charge an Executor on a ſpecial Promiſe to anſwer Damages "out of his own Eſtate, or to charge the Defendant upon any Promiſe, "to anſwer for the Debt or Miſcarriage of another, or upon an Agreement or Conſideration of Marriage, or on any Contract or Sale of "Lands, Tenements or Hereditaments, or any Intereſt concerning them, "or on any Agreement not to be perform'd within a Year after the "Making, unleſs ſuch Agreement, or ſome Note thereof be in Writing, "and ſigned by the Party to be charged, or ſome other by him authorized."

2. Where the Plaintiff declared, that in Conſideration he, at the Requeſt of the Defendant, would let a certain Gelding to *J. S.* the Defendant undertook that the ſaid *J. S.* ſhould deliver it to the Plaintiff; this was held to be within the Statute; for this Bailment is ſuch, as in its Nature required a Redelivery; and if the Bailee will not deliver the Thing bailed, the proper Remedy is an Action of Detinue againſt the Bailee. Therefore this Promiſe of the Defendant's, that *J. S.* ſhould redeliver the Horſe bailed, for which there is a Remedy againſt the Bailee, is a collateral Promiſe, and is therefore a Promiſe to anſwer for the Act or Default of another, within the Intention of the Act: So if two Men come to a Shop, and one of them contracts for Goods, and the Seller does not care for truſting him; whereupon the other ſays, let him have them, and I'll undertake he ſhall pay you; this likewiſe is an Undertaking for the Act, and Default of another; but otherwiſe would it have been if he had ſaid, let him have them, and I'll ſee you paid, or I'll be your Pay-maſter. *Modern Caſes* 250. *Bourkmore* v. *Danrell.*

3. A Promiſe to pay ſo much Money upon the Return of ſuch a Ship, which happen'd not to return in two Years Time after the Promiſe made; that was held to be out of the above-mention'd Statute, and it was ſaid in this Caſe, that the Clauſe of the Statute extends only to ſuch Promiſes, where by the expreſs Appointment of the Parties, 'tis not to be perform'd within a Year. *Salk* 208. *Anonymus.*

4. Where the Plaintiff had a former Action againſt the Defendant and two others, and declares, that in Conſideration he would forbear, the Defendant would pay him 10 *l.* held to be out of the Statute, becauſe the Defendant was a Party. *Cumb.* 362. *Stevens* v. *Squire.*

5. A Man contracts to pay 100 *l.* upon the Day of his Marriage, this needs not to be put in Writing, not being within the Statute of Frauds, the Words whereof are; "That every Contract not to be performed "within one Year after the Making ſhall be put into Writing." So that the Deſign of the Statute was, that only thoſe Contracts that were impoſſible to be performed within that Time, *&c.* Now this Contract depends upon a Contingency, that may, or may not be perform'd within the Year; and therefore is *Caſus omiſſus* out of the Statute, as was reſolved by moſt of the Judges, by Information of *Holt* Chief Juſtice.

6. Where the Caſe was, that the Defendant ſold a Gelding to the Plaintiff for eight Guineas, upon this Condition, that in Conſideration

the Plaintiff had paid the Defendant the eight Guineas, as the Defendant promiſed, that if the Plaintiff did not like the Gelding, and delivered it to *Barham*, to the Uſe of the Defendant, that *Barham* ſhould repay the Plaintiff the eight Guineas; and if he did not, that the Defendant would; held that this was not a collateral Promiſe for Payment in Default of another, but it was Part of the entire Contract upon the Sale. 3 *Lev.* 363. *Maſters* v. *Maſters*.

And here I ſhall inſert a few Caſes where the Action hath been adjudged well brought, and where not.

1. *Foſter* v. *Taylor*, on Money paid at ſeveral Days, and Action brought upon Failure of the firſt Payment. *Cro. Eliz.* 776, 807.

2. It was held, that an *Indebitatus Aſſumpſit* will not lie againſt the Father for Money lent to the Son at his Requeſt; for in Reſpect to the Father it is a collateral Promiſe, upon which the Plaintiff might have declared ſpecially; becauſe upon lending to the Son, the Law can't raiſe a Promiſe by the Father, but it will by the Son. *Butcher* v. *Andrews*, *Carthew* 446.

3. An Action brought by an Adminiſtrator upon an *Indebitatus Aſſumpſit* to Inteſtate, and on an *Inſimul Computaſſet* with the Adminiſtrator, for Money due to the Adminiſtrator, can't be join'd, becauſe the Coſts to be recovered are entire, and then the Plaintiff can never diſtinguiſh how much he is to have as Adminiſtrator, and how much as his own. *Rogers* v. *Cook*, *Salk.* 10.

4. Where *Deceipt*, and an *Aſſumpſit* was laid together, and held ill. *Beningſage* v. *Ralphſon*, 2 *Show.* 250.

5. When Money is to be paid at ſeveral Days, the Action may be well brought at the firſt Breach, but not ſo in Debt. 2 *Roll's Rep.* 47. *Beckwith* v. *Pott*.

6. Brought by Husband and Wife, for Money receiv'd of the Wife during Coverture, and ill. *Abbott and his Wife* v. *Blofield*. 2 *Cro.* 644.

7. Adminiſtrator ſues the Defendant on one Promiſe to the Inteſtate, and another in her own Right, and held ill. 3 *Keb.* 323. *Courties* v. *Daws*.

8. An Action upon the Caſe by an Attorney, upon an *Inſimul Computaſſet*, is held to be out of the Statute of King *James* the Firſt; ſo that no Bill or Note need be deliver'd to the Defendant before the Action brought. 1 *Show.* 48. *Jordan* v. *Powell*.

9. Where the Defendant gave the Plaintiff an Attorney ſo much in Hand to defray his Charges, and promiſed to pay him what more he ſhould lay out. It was held, that the Statute of 3 *Jac.* 1. *cap.* 7. of delivering a Bill, did not extend to a ſpecial Promiſe. *Allen* 4. *Evely* v. *Livermore*.

10. If an Action is brought upon an Agreement to pay ſo much for every Tun of Iron that ſhall be delivered, no Action can be brought for Half a Tun; ſo it is to pay ſo much to a Clerk *per* Quire for Writing; but if one promiſes, who puts out his Daughters to board to learn Needlework, to pay for a Year's Board, an Action will lie for the Daughters Board, for any Time not exceeding a Year, for that ſhall be conſtrued the Intent of the Agreement. 1 *Syd.* 225.

11. Where 4 *l.* was to be paid at five Shillings *per* Month, the Action was brought before the Whole payable, and held good. *Beckwitt* v. *Nott*, 2 *Cro.* 504.

12. So where ſeveral Sums are awarded to be paid at ſeveral Times, an *Aſſumpſit* lies for every Sum, as it becomes due. 2 *Saunders* 337. *Cooker* v. *Whorwood*.

This Action upon the Caſe, grounded on an *Aſſumpſit*, is to be brought on Bills of Exchange, and Promiſſory Notes; and the Method here taken to diſtribute the Caſes in the Books relating thereto, is in the following Manner.

Firſt, *Of Bills of Exchange and Promiſſory Notes, what they are, and where Good.*
Secondly, *Of the Drawer.*
Thirdly, *Of the Perſon upon whom a Bill is Drawn.*
Fourthly, *Of the Perſon to whom a Bill is payable, and therein of the Bearer or Indorſor.*
Fifthly, *Of the Proteſt.*

Concerning Declarations and Pleas, and other Incidents relating thereto, ſee hereafter in the Titles of Declarations and Pleas in this Action.

Firſt, *Of Bills of Exchange, what they are, and where good.*

1. The eſſential Part of a *Bill of Exchange*, is its being in Writing, containing ſufficient Words to conſtitute that Inſtrument, according to the Intent of the mercatorial Law, and the Acts of Parliament relating thereto.

2. Foreign *Bills of Exchange* have been of ancient Uſe, and have been found of great Benefit to Commerce. For the Eaſe and Safety of tranſmitting from one Kingdom to another valuable Conſiderations for Merchandizes, whereas Money cannot be ſo eaſily and ſafely tranſmitted and paid as by ſuch Bills; and as *Bills of Exchange* tend greatly to the Benefit of Commerce, there are annexed to them many Privileges that are not annexed to Inſtruments of a ſuperiour Nature.

3. One of the Privileges of theſe Inſtruments of Trade is, that they are negotiable and aſſignable from one Perſon to another; whereas a Bond (*unleſs a Bail-Bond, and that by a particular Act of Parliament*) is not aſſignable, ſo as to veſt a Power in the Aſſignee to ſue thereupon in his own Name; and whoever has the Cuſtody of theſe Bills, with a proper Indorſement thereon, has the legal Property therein, and is entitled to receive the Money due thereon. *Stile 366. Anonymus.*

4. The uſual Words which conſtitute a *Bill of Exchange* are, ſignifying that the ſame is drawn by one or more Perſons upon, and directed to one or more Perſons, thereby requiring the Perſon or Perſons, to whom it is directed, to pay a Sum of Money therein-mention'd, to any other Perſon or Perſons, or to him or them, his or their Order, or to the Bearer on Demand, at Sight, or at a Time therein ſpecified for Value receiv'd; tho' the Words *Value received* are not eſſentially Neceſſary.

5. And it hath been adjudged, where a Bill was drawn in this Manner; *Sir, You are to pay to Mr.* Jenny, *ſo much Money, out of the Money belonging to the Governors and Company of* Devonſhire *Miners, directed to one* John Pratt, *Eſq; their Caſhier,* that this was not a good Bill of Exchange.

For this is no more than a Direction or Appointment to the Caſhier to pay the Money, and doth not Anſwer the Neceſſity of Trade; for it is not negotiable as a Bill for Money; therefore it would be ill convenient to the Drawer; for if he might be charged on ſuch a Note, then any Man, who gives his Steward an Order, or Authority to pay Money, might be charged for Non-payment.

Beſides, 'tis the Subſtance of the Drawer, which is always conſider'd in Bills of Exchange, for it is that which makes them negotiable; but this new Invention of drawing Bills on Caſhiers to pay Money out of

Funds, makes no Difference between the Beſt and Worſt Man as to his Subſtance.

'Tis true, there are three Perſons named in this Note, of which the Caſhier of the Company is one; and this is all which makes it like a *Bill of Exchange*, tho' there are ſuch Bills between two Perſons, as where they are made payable by themſelves, for ſo are Goldſmiths Notes. Now if this Note had been accepted by the Caſhier, and he had died without paying the Money, certainly his Executor could not be charged.

'Tis true, Cuſtom hath carried *Bills of Exchange* a great Way, but never ſo far as to make them payable out of any particular Fund; and for theſe Reaſons, the Judgment in the Common Pleas was reverſed, upon a Writ of Error in the King's Bench. *Mod. Caſes in Law and Equity* 267.

6. A Bill for the Payment of Money when the Defendant ſhould marry *A.* was held to be not a good *Bill of Exchange.* 4 *Mod.* 244.

7. As it has been ſaid before, the Words *Value received* are not eſſentially Neceſſary to a *Bill of Exchange*; if *Value received* be mention'd therein, the Drawer is liable at the Common Law; if it be not, then by the Cuſtom of Merchants. *Show.* 5. *Mod. Caſes in Law and Equity* 267. 2 *Keb.* 695. *Brown* v. *London.*

8. Intereſt on a *Bill of Exchange*, commences from the Demand; if no Demand be made till the Action brought, the Defendant may plead Tender and Refuſal, and that he is ready to pay, to diſcharge himſelf from Intereſt. 6 *Mod.* 138.

9. Theſe Inſtruments of Paper Credit every Day more and more gaining the Eſteem of the trading Part of the Nation, it was thought Proper by the Legiſlature, to give Encouragement to promiſſory Notes in Writing, whereby the Party drawing the ſame, did not direct Money to be paid by another, but promiſed Payment himſelf; and theſe Notes are now made aſſignable by the following Act of Parliament.

10. By the 1 Stat. 3 *&* 4 *Annæ cap.* 9. "All Notes ſigned after the firſt of *May*, 1705. by any Perſon, *&c.* whereby any ſuch Perſon, *&c.* ſhall promiſe to pay any other Perſon, *&c.* or Order, or Bearer, the Money mentioned in ſuch Note, ſhall be conſtrued to be, by Virtue thereof, due and payable to ſuch Perſon, *&c.* to whom the ſame is made payable; and alſo ſuch Note payable to ſuch Perſon, *&c.* or Order, ſhall be aſſignable over in Manner as Inland *Bills of Exchange* are; and the Perſon, *&c.* to whom ſuch Money is payable, may maintain an Action for the ſame, as they might upon *Bills of Exchange*; and the Perſon, *&c.* to whom ſuch Note ſo payable to Order is aſſigned or indorſed, may maintain an Action againſt the Perſon, *&c.* who ſigned, or any who indorſed the ſame, as in Caſes of Inland Bills, and recover Damages and Coſts of Suit; and in Caſe of Non-ſuit, or Verdict againſt the Plaintiff, the Defendant to recover Coſts againſt the Plaintiff."

11. Such Actions to be brought within the Time appointed for bringing Actions *per* 21 *Jac.* 1. *cap.* 16.

12. An Action was brought againſt the Drawer by the ſecond Indorſee, upon a Note given in theſe Words, *viz. I promiſe to Account with* T. S. *or his Order, for* 50l. *Value received by me*, &c.

This was adjudged in the Behalf of Trade, a good Note, and the Act of Parliament a remedial Law, for which Reaſon it ſhall be extended as far as poſſible; therefore the Words in this Note, by which the Drawer promiſes to be accountable to *T. S.* for 50 *l.* ſhall be conſtrued as a Promiſe to pay the Money, and the rather becauſe 'tis to be accountable to *T.* or his Order, but 'tis impoſſible for him to account with the Indorſee; therefore it muſt be to pay; beſides, this muſt be originally either a Debt or a Truſt, and nothing appears in the Note to make it a Truſt, therefore it muſt be a Debt.

As to the Objection that the Drawer may be a Factor, and might apply this Money for the Uſe of the Drawee, the Words in this Note will not make him a Factor, *viz. I promiſe to be accountable for ſo much Money*, &c. for the Money muſt be received to Account, as well as the Promiſe made to Account, therefore the Word *accountable* in this Caſe ſhall be taken to pay; and the Difference is, when 'tis to be *accountable for Value received*, and when it is *Value received on Account*, or *to Account*, or as *per* Account, as 'tis uſual between Merchant and Factor, or Lord and Steward; and it would be dangerous to the Credit of thoſe Notes, if this ſhould not be good; therefore Judgment was given for the Plaintiff. *Mod. Caſes in Law and Equity* 363, 364. *Morrice* v. *Lea*.

13. In an Action of Debt on a promiſſory Note, the Defendant demurred to the Declaration; and the Queſtion was, whether an Action of Debt would lie; it was ſaid that it would not lie againſt the Indorſor, but that it would lie againſt the Drawer.

14. The Statute of 9 *W.* 3. puts Inland *Bills of Exchange* upon the ſame Footing with Foreign Bills, where the Money is recoverable by the Cuſtom among Merchants upon the Signing ſuch Bills; and the Statute 3 *Annæ* puts promiſſory Notes on the ſame Footing with Inland Bills, and enacts, that the Aſſignee, or Endorſee, may maintain an Action againſt the Drawer or Endorſor, and recover Damages, *&c.* which ſhews, that an Action of Debt will not lie, becauſe Damages are never recovered in Debt.

15. If the Plaintiff had not declared on the Note, which he had done in this Manner, *viz.* That the Defendant *onerabilis fuit per notam*, he ſhould have Judgment; but an Action of Debt was never known to be brought on a *Bill of Exchange* or Note; if he had declared on an *Indebitatus Aſſumpſit*, he might have recovered in Damages; the Plaintiff had Leave to diſcontinue. *Mod. Caſes in Law and Equity* 373, 374.

16. Where a Note is, *I promiſe to pay to* R. *or Order* 100 l. *on Account of Wine had of him*, it was held a good promiſſory Note. *Mod. Caſes* 29. *Buller* v. *Crips*.

17. A Man may not declare in Debt on a promiſſory Note, tho' he may upon an *Indebitatus Aſſumpſit*. *Welſh* v. *Creagh*, *Mod. Caſes in Law and Equity* 373.

Secondly, *Of the Drawer*.

1. Where a Man draws a *Bill of Exchange*, he ſubjects himſelf to the Payment of the Money, if the Perſon upon whom it is drawn refuſes either to accept or pay it; yet it is with this Limitation, that if it be not paid in a convenient Time, the Perſon to whom it is payable ſhall give the Drawer Notice; for otherwiſe the Law will imply the Bill paid, becauſe there is a Truſt between the Parties; and it might be prejudicial to the Commerce of the Nation, if the Bill ſhould riſe up to charge the Drawer at any Time, when in the mean Time all Reckonings and Arrears are adjuſted between the Drawers and the Perſons to whom ſuch Bills are directed. *Salk.* 127.

2. The Drawer is always liable, tho' there be no Tender for the Payment, or the Bill be not proteſted at the Time, unleſs the Perſon on whom it is drawn break, and then it is otherwiſe; for the Party who paid Money for the Bill loſeth it. *Show.* 319. *Mogadara* v. *Holt*, 2 *Keb.* 105.

3. If a *Bill of Exchange* be indorſed, and not paid, you muſt give Notice to the Drawer. *Mod. Caſes in Law and Equity* 43. *Lawrence* v. *Jacob*.

Thirdly, *Of the Perſon upon whom a Bill is drawn, who if he accepts the Bill, is properly called the Acceptor.*

1. This Acceptor, whether Value be mentioned in the Bill or no, is ſuppoſed to have Effects of the Drawer's in his Hands, ſufficient to anſwer the Money therein directed to be paid; if he has not, but has Effects to anſwer Part, he may accept it as to Part, or to Part in Money, and Part in Bills, and there may be a Proteſt for the Reſidue. *Cumb.* 452.

2. If he accepts it for Payment, and does not pay it, a ſpecial Action lies againſt him for Non-payment, purſuant to ſuch Acceptance; 2 *Show.* 8, 459, 510. but it was held that no *Indebitatus Aſſumpſit* will lie againſt the Acceptor, becauſe his Acceptance is an Engagement collateral to the Bill. 1 *Salk.* 23.

3. A Bill once accepted can't be revok'd by the Party that accepted it, tho' immediately, and before the Bill becomes due, he receives Advice, that the Drawer is broke. *Lex Mercatoria* 274. *Malyn*'s Advice of *Bills of Exchange*, *fol.* 20.

4. If one Merchant having a right Underſtanding with the Perſon that brings the Bill, and ſays, *Leave it with me, and I'll accept it*; this by the Cuſtom of Merchants obliges him as effectually, as if he had ſigned it.

5. If a Bill be accepted, and the Perſon who thus accepted it dies before the Bill is become payable, there muſt be a Demand made of his Executors or Adminiſtrators; and a Requeſt on Non-payment is to be made, tho' the Money becomes due before Adminiſtration granted. *Lex Mercatoria*, *cap.* 6, 7. *Malyn*'s Advice concerning *Bills of Exchange*, *fol.* 32.

6. The Servant of a Merchant can't accept a *Bill of Exchange* for his Maſter, without plain Evidence that he hath Authority to do it, or where the Maſter uſually allows the Payment of Bills accepted by his Servant. *Lex Mercatoria* 265. 6 *Mod.* 56.

7. But another Perſon may accept a Bill for the Honour of the Drawer, and if he pays the Money in Default of the Party, he is to make a Proteſt with Declaration, that he hath paid the ſame for the Drawer's Honour. *Lut.* 891.

8. When the firſt Indorſor ſigns the Bill, the Acceptor is no longer chargeable, unleſs one of the Indorſors pays the Bill to his Indorſee, then he becomes entitled to ſue the Acceptor. 1 *Lut.* 885.

Fourthly, *Of the Perſon to whom the Money is payable, wherein is to be conſider'd the Bearer or Indorſor, and the Indorſement.*

1. A Bill may be made payable to a Perſon without any more, or to ſuch a one, or Bearer, or to ſuch a one, or Indorſor.

2. If a Bill of Exchange be made payable to *A.* or Bearer, and *A.* indorſes it to *B. B.* can't maintain an Action againſt the Drawer, for it is not aſſignable by the Contract, but *B.* may maintain an Action againſt *A.* for the Effect of that Indorſement is only to diſcharge the Perſon upon whom it is drawn, if he pays it to the Bearer, tho' he comes to it by Trover, Theft, or otherwiſe. *Salk.* 25.

3. But tho' a Bill payable to Bearer thus indorſed, is not aſſignable to charge the Drawer in the Name of the Indorſee; it is good to maintain an Action at the Suit of the Perſon to whom it is thus indorſed againſt the Indorſor. *Salk.* 25. becauſe the Indorſement is in the Nature of a new Bill. *Hodges* v. *Steward*, 3 *Lev.* 299.

4. If a Bill payable to *A.* or Bearer, be bought at Diſcount, it is an abſolute Purchaſe, if payable to Order, and indorſed, the Indorſor warrants the whole Bill. *Salk.* 128.

5. Where a Bill is payable to *A.* or Order, and *A.* indorſes it to *B.* he can't ſue *A.* till he has endeavour'd to find the Drawer to demand it of him, and that muſt be ſet forth in the Declaration. *Salk.* 126.

6. If a Bill is made payable to *A.* or Order, and *A.* indorſes it Blank, and delivers it to *B.* this gives *B.* an Election to receive it as Servant, or as Indorſee; but till the Blank is filled up, the Property remains in *A.* *Salk.* 126.

7. If a *Bill of Exchange* is indorſed to another by an Indorſor, yet the Indorſor may bring an Action upon this Bill. *Show.* 164.

8. Between Indorſor and Indorſee, the Indorſor muſt have Notice of Non-payment by the Drawer, and a Neglect in the Indorſee, of not receiving the Money in a convenient Time, will excuſe the Indorſor. *Salk.* 132.

9. And that Convenient Time to receive the Money to charge the Drawer or Indorſor, ſhall be guided and govern'd by the Uſage of Merchants and Traders, and the particular Circumſtances that occur. *Salk.* 123.

10. Yet when *A.* indorſes and delivers a Bill to *B.* who keeps it by him long after 'tis payable, if 'tis not paid, he may have an *Aſſumpſit*; for a Bill ſhall never go in Diſcharge of a precedent Debt, except it be Part of the Contract that it ſhould be ſo. *Salk.* 124.

11. And the Indorſement, Delivery, and Detainer are no Evidence, that *B.* the Indorſee accepted it as ſo much Money; but if *A.* ſells Goods to *B.* and agrees to take a Bill on *C.* in Satisfaction, or if the Servant of *A.* who is ſent for the Money takes a Bill, and *A.* accepts it, and agrees to it, then *B.* is diſcharg'd, tho' it be never paid. *Salk.* 442.

12. An Indorſee of Part of a Sum in a Bill, can't bring an Action for Part, without ſhewing the other Part ſatisfied, becauſe the Action and Contract are both intire; and if he could by this Management, a Man may have two Actions againſt the Drawer, when by Law he can have but one, and that would work an Injury to an innocent Perſon; but the Law is otherwiſe, and in that Caſe he muſt acknowledge Satisfaction for the Reſidue, and that will do with Reſpect to the Drawer and Indorſor. *Salk.* 65.

13. If a Man pays away a Note of a third Perſon to another, who takes it as abſolute Payment, yet if he that paid it away knew that the third Perſon was breaking, and the Perſon to whom the Note was paid, uſes all Diligence to get Payment, this ſhall be conſtrued a Fraud; but if a Man takes a Note, and neglects to go and receive it, and the Party fails, the Loſs ſhall fall upon the Neglect. *Mod. Caſes* 148. *Popley* v. *Aſhley*.

14. The Indorſement of a *Bill of Exchange* is a Writing, ſignifying that the Property of that Note is thereby transferred to the Indorſee; and tho' an Acceptance of a *Bill of Exchange* may be by Parol, yet the Transferring the legal Property of the Note muſt be by Writing, and that Writing muſt be ſignificant, that the Property is thereby transferred; and it was adjudged in the Caſe of *Eſt* and *Eſſington*, reported in *Farreſley* 8. that where the Perſon, to whom the Bill was made, indorſed upon the ſaid Bill the Contents thereof, to be paid to the Plaintiff, was ſignificant to paſs the Property of that Bill to the Plaintiff, according to the Cuſtom of Merchants; and in as much as there had been a Verdict for the Plaintiff, the Jury could not have found for the Plaintiff, without finding the Indorſement, and to be a good one; and *Holt* Ch. Juſt. in that Caſe ſaid, that if a Man writes upon the Back of a *Bill of Exchange*, this is to be paid to *J. S.* and ſets his Hand to it, that will be a good Indorſement.

15. The laſt Indorſee may bring an Action againſt the laſt Indorſor, without ſuing the Drawer, and the reſt ſucceſſively, for he hath his Election to ſue the one or the other. *Show.* 442.

Fifthly, *Of the Proteſt.*

1. This Proteſt is a Notice given by the Perſon to whom a Bill is payable, that the Perſon upon whom it was drawn, refuſed to pay the Money there-

in contained; and after ſuch Proteſt, the Drawer became liable to pay for the Exchange, Intereſt and all Charges, Damages and Loſſes that may be ſuſtained by ſuch Refuſal; and it was originally uſed as a Terror, to trading Perſons, that they might not draw Bills when the Perſon upon whom they are drawn had no Effects in their Hands; and when they had, it was a Terror to them, that they might not fail in paying ſuch Bills ſo drawn; for by this Proteſt, all Perſons were made acquainted that this was not a good Bill at that Time.

2. Before the Statute of 9 *W.* 3. *c.* 17. if a Bill was Foreign, one could not reſort to the Drawer to charge him for Non-acceptance, or Non-payment, without a Proteſt, and reaſonable Notice thereof; but in Caſe of an Inland *Bill of Exchange* it was otherwiſe; the Proteſt was order'd for the Benefit of the Drawer, to give Notice that the Bill is not accepted.

3. *Bills of Exchange* were found to be ſo convenient for the Advancement and Benefit of Commerce, that the Parliament thought fit by that Statute to make Inland Bills of as much Force and Validity, and to have the ſame Qualifications, as Foreign *Bills of Exchange*; and therefore it was enacted, "*That all Bills of Exchange, dated at, or from any Place in* England, *of the Sum of five Pounds or upwards, upon any Perſon in* London, *or other trading City, Town or Place, drawn payable at a certain Time after the Date thereof; and in which Bills the Value ſhall be expreſs'd to be received, may after the Acceptance thereof in Writing, and the Expiration of three Days after the ſame ſhall be due, be proteſted by a Notary Publick; or if there be none ſuch by any other ſubſtantial Perſon of the Place before two Witneſſes, on a Refuſal or Neglect thereof; which Proteſt ſhall be made under a Copy of the ſaid Bill, and ſhall be notified within fourteen Days after to the Party from whom the Bills were received, who upon producing the ſaid Proteſt, is to repay the Bills with Intereſt and Charges from the Proteſting; and in Default of ſuch Proteſt, or Notice to be given, as aforeſaid, the Perſon failing ſhall be liable to all Coſts, Damages, and Intereſt thereon.*"

" Provided *That if any ſuch Indland Bills be loſt, or miſcarry within the Time limitted for Payment of the ſame, the Drawer of the ſaid Bills ſhall give other Bills of the ſame Tenour, Security being given to indemnify him, in Caſe the ſaid Bills ſo loſt or miſcarried be found again.*"

This Statute was thought not to have given a complete Remedy, and a ſufficient Qualification to Inland *Bills of Exchange*; ſo that afterwards by a Statute of the 3 & 4 *Annæ*, *cap.* 9. it was enacted; " That after the firſt Day of *May*, 1705. in Caſe the Party on whom any Inland *Bill of Exchange* ſhall be drawn, ſhall refuſe to accept the ſame, by Under-writing the ſame under his Hand, the Party to whom payable, ſhall cauſe ſuch Bill to be proteſted for Non-acceptance, as in Caſe of Foreign Bills, for which Proteſt ſhall be paid two Shillings and no more."

" Proviſo, That no Acceptance of ſuch Inland Bill ſhall charge any Perſon, unleſs under-written or indorſed; no Drawer to pay Coſts, Damages, or Intereſt thereon, unleſs Proteſt be made for Non-acceptance, and within fourteen Days after Proteſt, the ſame be ſent, or Notice thereof given to the Party, from whom ſuch Bill received, or left in Writing at his uſual Place of Abode."

" If ſuch Bill be accepted, and not paid within three Days after due, then no Drawer ſhall pay Coſts, Damages, or Intereſt thereon, unleſs Proteſt be made and ſent, or Notice given as aforeſaid; nevertheleſs the Drawer ſhall be liable to Payment of Coſts, Damages and Intereſt, if any one Proteſt be made for Non-acceptance, or Non-payment, or Notice be ſent, given or left."

" Proviſo, That no ſuch Proteſt ſhall be neceſſary, unleſs the Value be expreſſed in ſuch a Bill to be received, and unleſs the Bill be drawn

“ for 20 *l.* or upwards, and Proteſt be made for Non-acceptance, by Perſons appointed; *per* 9 *W.* 3. *cap.* 17. See Trade in 9 *W.* 3. *cap* 17.”

“ If any Perſon accept ſuch *Bill of Exchange*, in Satisfaction of any former Debt, the ſame ſhall be eſteemed a full Payment, if he doth not his Endeavour to get the ſame accepted and paid, and make his Proteſt as aforeſaid, for Non-acceptance, or Non-payment.”

“ Proviſo, That nothing herein ſhall diſcharge any Remedy any Perſon may have againſt the Drawer, Acceptor or Indorſor of ſuch Bill. *Abr. of the Stat.* 118.”

4. Where a Bill is proteſted for Non-acceptance, the Drawer 'tis ſaid muſt have Notice of the Proteſt. 2 *Keb.* 584. *Butler* v. *Play.*

5. If a Bill is negotiated after it is due, it is payable at Sight; and if it is payable at a certain Day, and accepted, the Proteſt muſt be at the Day of Payment; if payable at Sight, it muſt be proteſted at the third Day of Grace. *Show.* 164.

6. In Caſe of an Inland *Bill of Exchange*, a Proteſt was not Neceſſary before the Statute of 9 *W.* 3. *cap.* 17. and that Statute does not take away the Plaintiff's Action for want of a Proteſt, only in Caſe of a Proteſt, the Party drawing is liable to Damages, Intereſt and Coſts. *Salk.* 131.

7. Before that Act of Parliament, it was held in the Caſe of *Butler* v. *Play.* That if a Proteſt had been a Fortnight after the Refuſal of Payment of the Bill, it was by Law accounted a reaſonable Time. 1 *Mod.* 27.

8. In Caſe of Neceſſity it was held, that a Proteſt might be made on a Copy of the Bill. *Show.* 164.

For Declarations and Pleadings in this Action, ſee hereafter in the Titles Declarations and Pleadings in *Aſſumpſit*.

Secondly, By and againſt whom this Action on the Caſe on an Aſſumpſit is to be brought.

1. *Who may bring the Action.*

1. It was adjudged that the Husband and Wife might bring the Action for a Cure performed by the Wife during the Coverture, and that the Action would ſurvive to her. 2 *Cro.* 77.

2. If a Promiſe be made to the Wife during Coverture, it was held in 1 *Cro.* 61. that Husband and Wife might well bring the Action. *Q. de hoc.*

3. He for whoſe Advantage the Promiſe is made, may bring the Action notwithſtanding the Promiſe was actually made to a third Perſon. *T. Jones* 103. *Dutton and his Wife* v. *Poole.*

4. Where a Debt was due to a Feme Sole, who after being married, the Defendant accounts with the Husband; it was held that the Husband and Wife ought to have brought the Action, becauſe in all Caſes, ſo long as the firſt Contract, or Specialty, made to the Wife while Sole, continues, ſhe ſhall be join'd, in as much as if the Wife dies, the Husband can't bring the Action but as Adminiſtrator to her. And this Diverſity was taken by the Court, that where the Husband and Defendant accounted for Money due to his Wife, *dum ſola*, and it was found that the Defendant promiſed to pay him, and he brings the Action; it is ill after a Verdict; but where, in Conſideration the Husband would forbear a Suit, the Defendant promiſes, and the Husband brings an Action upon that Promiſe, there, in as much as it is a new Contract, which changes the firſt by the Forbearance, there the Wife need not be join'd. 1 *Syd.* 299. *Tirrell* v. *Bennett.*

5. And in *Allen* 36. in the Caſe of *Hilliard* and his Wife againſt *Bambridge*, it was held, that upon a Promiſe made to Husband and Wife, it was in the Election of the Husband to bring the Action with or without

his Wife; and theſe Caſes were cited. 43 *Ed.* 3. 10. 15 *Ed.* 4. 10. *c.*— 7 *Ed.* 4. 6 *a.* 7. *Baron and Feme* 55.

6. The Defendant diſtrained the Plaintiff's Cattle, the Defendant, in Conſideration of ten Pounds paid to him by the two Plaintiffs, promiſed, to procure the Cattle to be deliver'd to them, and becauſe they were not deliver'd, they brought this Action; and *Roll* Chief Juſtice held the Promiſe to be entire, as the Conſideration was. *Stile* 156, 203. *Vaux* & *Vaux* v. *Steward*.

7. A Sale by Joint-Merchants to *B.* and *A. A.* one of the Joint-Merchants dies, the Action ſurvives, and the Executor of *A.* need not be joined. 3 *Keb.* 798. *Hall* v. *Rougham*.

2. *Againſt whom it may be brought.*

1. It can't be brought againſt the Husband on a ſuppoſed Promiſe made by him, for the Forbearance of ſuing for a Debt due to the Plaintiff by the Teſtator, to whom his Wife was Executrix, and dead at the Time of the Promiſe. 2 *Cro.* 257. *Smith* v. *Johns*.

2. If an Infant be bound in a Bond, and in Conſideration the Plaintiff would not ſue him, he promiſed to pay; this will not make the Action againſt the Infant to be good. *Cro. Eliz.* 700. *Morning* v. *Knop*.

3. If I pay Money in Satisfaction of a Duty, and he to whom it is paid, hath no Title to receive it, and the Duty is unſatisfied, I may have an Action againſt him that received it. 2 *Syd.* 4. *Bonnell* v. *Foulke*.

4. The Plaintiff brought an Action, as Principal of *Furnival's Inn*, upon an *Inſimul computaſſet*, for Money due to him, and the Seniors of the Society. Here it was agreed, that Church-wardens might bring an Action in their Name, for the Debt of the Pariſh, for they are a Corporation; but here the Principal and Antients ought to have join'd. And tho' the Defendant be one of them, the Promiſe is to all the reſt, excluding himſelf; ſo if there be twenty Partners, and one Covenants with all the reſt, he is in that Reſpect ſeparate from them, and they muſt all join in an Action. *Thimblethorp* v. *Hardeſty*, *Far.* 116.

5. As under the foregoing Title, it was adjudged, that the Husband ſhall join his Wife in an Action upon an *Inſimul Computaſſet*, for a Debt due to the Wife when Sole, ſo in the Caſe of *Drue* and *Thorne*, in *Allen* 72. was it held, that if an Action be brought againſt the Defendant, only upon an *Inſimul Computaſſet*, for a Debt due by the Defendant's Wife when Sole, that is ill, for the Wife ought to be join'd in the Action.

6. It can't be brought againſt an Infant upon an *Inſimul Computaſſet*, tho' the original Contract were for Neceſſaries. 2 *Roll's Rep.* 271. *Tirrell's* Caſe.

7. Where it has been held to lie againſt a Servant, for Goods bought for the Maſter. *Dyer* 230. *Alford's* Caſe.

8. Where an Infant is bound in a Bond with a Surety, and at his full Age, promiſes the Surety he will ſave him harmleſs; it is ſaid in the Caſe of *Stone* and *Withipole*, 1 *Leon.* 113. that an Action may be brought againſt the Infant upon that Promiſe. And in the Caſe of *Barton* and *Edmonds*, in 4 *Leon.* 5. it is ſaid in ſuch Caſe, where the Infant died, that the Action lies againſt his Executors. *Tapper* v. *Davenant*, 3 *Keb.* 798.

9. It lies for a Feme Sole, who marries a Man that was before married to a Woman then alive, for Money by him had and receiv'd from the Tenants of the Feme Sole after their Marriage; the Reaſon of this is, becauſe this ſecond Marriage was *ipſo facto* void. 1 *Salk.* 28. *Haſſer* v. *Wallis*.

10. Where a Feme Covert parted from her Husband by Conſent, who allowed her a ſeparate Maintenance, and ſhe came up from *Beverley* to *London*, and lived here four Years, and was big with Child, and an Action being brought againſt the Husband; upon this whole Matter it

was adjudged, that the Husband was not liable. 6 *Mod.* 147. *Cragg* v. *Bowman*.

11. Where a Woman married carries on a Trade in *London* by her ſelf, tho' in a Garret, as a Gimp-Lace-maker, or a Manteau-maker, and the Husband never intermeddles therewith, ſhe is conſtrued a Feme Sole, and the Husband is not chargeable for her Debts; but if at any Time he during her Life intermeddled, he is. 1 *Show.* 183, 184, 185, *Fabian* v. *Plant*.

12. Where the Husband had married two Wifes, and the Second came up to Town, to proſecute him, and was committed to the Cuſtody of the Plaintiff a Gaoler, by the Husband's Complaint, the Husband ſhall not be chargeable to the Gaoler for what he provides for her. 2 *Lev.* 16. *Calverly* v. *Plummer*.

13. Tho' an Action will lie againſt an Infant for Neceſſaries, yet where the Plaintiff declared for Gold and Silver-lac'd Cloths, and for other Neceſſaries; and the Defendant pleads Nonage, and the Plaintiff replied they were for Neceſſaries; upon a Demurrer, the Court looked upon the Record, and ſaw that the Defendant was there ſtiled a Gentleman; and adjudg'd, that ſuch Cloths were not fit for the Degree of a Gentleman, and gave Judgment only for Neceſſaries; and as the Plaintiff had confeſs'd Part of the Contract received, applied that Part received to the Neceſſaries, ſo that Judgment was only for the Remainder. *Gouldſb.* 168. *Mackerell* v. *Bachelor*.

14. An Infant keeps a Mercer's Shop, and buys Goods; the Plaintiff brought an Action for Goods ſold and deliver'd to him; the Infant pleads Nonage; the Plaintiff replies, that they were for wearing Apparel, and for the Maintenance of his Family. The Defendant rejoins, that he kept a Mercer's Shop, and bought theſe Wares to ſell again; and traverſes, that he bought them for neceſſary Cloathing; and upon a Demurrer there was Judgment for the Plaintiff, but that Judgment reverſed upon a Writ of Error upon this Reaſon, that the Infant ſhall not be bound by his Contract, tho' it be for the Maintenance of his Family and his Trade. 2 *Cro.* 494. *Whittingham* v. *Hill*.

15. It will lie againſt an Infant for Meat, Drink, Apparel and Schooling. *W. Jones* 182. *Pickering* v. *Gunning*.

Thirdly, Of the Declaration.

1. Where a Declaration was not good for want of ſhewing, that the Plaintiff had not done all on his Part, and how it ought to have been. *Cro. Eliz.* 292. *Gregory* v. *Nevill*.

2. If one be indebted unto another upon a ſimple Contract, and the Plaintiff ſues for it, upon a Promiſe to pay it, he muſt ſhew how the firſt Debt grew due, and for what; as upon an *Indebitatus Aſſumpſit*, where the Debt is the Conſideration of the Promiſe. *Woodforn* v. *Deacon*. But upon an *Inſimul Computaſſet* he need not ſhow how, and for what, but generally that the Defendant *Inſimul Computaſſet* with the Plaintiff *de diverſis denar' ſummis eidem Quer' per pred' Def. ante tempus ill' debit' & ſolubil'*, and upon the Account was found in Arrear ſo much, and in Conſideration thereof, did promiſe, *&c.* without ſhewing for what. 2 *Cro.* 207.

3. If one ſue upon a Promiſe to ſatisfie him for Work done, he muſt ſhew in his Declaration how much he deſerv'd for his Work. *Ibm.*

4. So if one ſue for a Thing ſold, where no Price was agreed upon, he muſt aver, and ſhew it to be worth ſo much.

5. Alſo where it is in Conſideration of Forbearance, the Cauſe of the firſt Debt need not to be ſhewn; as if one ſue for a Debt, and the Party, or another, pray the Plaintiff to forbear his Suit, and he will pay, it, *&c.* upon a Suit upon this Promiſe, the Plaintiff need not ſhew the Cauſe of

the Debt he firſt ſued for, for the Forbearance is the Conſideration of this Suit. 1 *Syd.* 396. 2 *Cro.* 548. *Auſten* v. *Bewley*.

6. Upon a ſpecial Agreement to pay ſo much for him and his Wife, for Meat and Drink, if they were there and receiv'd it, he muſt there aver they were there, and received it. 2 *Syd.* 6.

7. An Action upon the Caſe, for that whereas the Defendant's Cattle were impounded by *A. B.* that the Defendant promiſed the Plaintiff, that if he would deliver them out of the Pound, that he wou'd ſave him harmleſs from *A. B.* and then ſet forth that *A. B.* had brought a *parco fracto* againſt him, &c. after Verdict for the Plaintiff, the Judgment was arreſted, becauſe the Plaintiff did not aver that he did deliver the Cattle, which was the Point traverſable. *Skinner* 141. *Anonymus*, *Mich.* 35 *Car.* 2.

8. If one Promiſes to enter into Bond for Performance of Articles, in an Action upon this Promiſe, the Breach aſſigned was for not entring into Bond, without ſhewing for what Sum the Bond was to be by the Agreement, it was held to be aided by the general Iſſue. *Mod. Rep.* 70.

9. Upon a Promiſe to give the Plaintiff a Horſe, if he would make a Leaſe for Years to him, rendring Rent, and alledged a Leaſe for Years, but did not ſay any Rent was reſerved; the Declaration was held naught, not purſuing the Agreement, tho' for the Defendant's Advantage. 3 *Bulſt.* 36.

10. Upon a Sale of Wine, the Vendor affirmed it the beſt Wine in *England*, in an Action upon this Affirmative it ought to be averred, that there was as good or better Wine in *England*. *Noy* 48.

11. For ſtopping a Way to ſuch a Field good, without ſhewing what Intereſt he has in the Field, but for ſtopping a Way to a Cloſe otherwiſe. *Lat.* 160.

12. In an Action for Money laid out, without ſhewing for what, not good. *Noy* 185. 2 *Cro.* 548.

13. In Conſideration the Plaintiff would abate of his Debt, the Defendant promiſed to pay; the Plaintiff muſt ſhew how he abated his Debt, and it is not ſufficient to ſay he abated ſo much. *Gould.* 156.

14. An Action upon a Promiſe to pay ſo much, if the Plaintiff would not further proſecute ſuch Suit; it is ſufficient to ſhew he did not proſecute ſuch Suit, without ſhewing a Diſcharge. 1 *Leon.* 118.

15. Where one Promiſes in the Penalty of 100*l.* to ſave the Plaintiff harmleſs from any Damage that ſhall happen by the Eſcape of *A.* the Averring *A.* eſcaped, and that the Defendant had not ſaved harmeſs, is ſufficient; but if it were to ſave harmleſs from the Eſcape, or pay 100*l.* it were not enough to aver he eſcaped, but that the Defendant had not paid 100*l.* 1 *Syd.* 447.

16. An *Aſſumpſit*, in Conſideration the Plaintiff would cure his Daughter, the Defendant promiſed to pay ſo much, without averring that he did cure his Daughter, and in Conſideration that the Plaintiff had cured his Daughter, that he the Defendant promiſed to pay ſo much; upon *Non Aſſumpſit* pleaded, and a Verdict for the Plaintiff, it was held good, for upon the whole Record, it appears that the Daughter was cured. 1 *Syd.* 428.

17. To return a Horſe by ſuch a Day, or pay ſo much, the Plaintiff aſſigned his Breach for not returning his Horſe by ſuch a Day, without ſaying he did not pay the Money, after a Verdict the Declaration was held naught. 1 *Syd.* 440.

18. The Plaintiff declares, that he was poſſeſſed of Tickets for the Payment of Seamens Wages, and had an Order from *A.* for Payment, and the Defendant an Under-Officer of *A.* promiſed that if the Plaintiff would not trouble *A.* that he would pay the Money; after a Verdict it was held good, tho' it was not alledged that he had a Title to the Tickets. 1 *Syd.* 292.

19. In *Aſſumpſit*, whereas the Plaintiff *Sectaſſet* the Defendant, he promiſed the Plaintiff, that if he would abſtain from his Suit, and ſhew a certain Account, he would pay, and the Plaintiff averred the Abſtaining from the Suit, and *oſtentavit quoddam computu' præd'*; and it was held good, but without *præd'* it would have been naught. *Mod. Rep.* 284.

20. In *Aſſumpſit quod cum* the Defendant, in Conſideration the Plaintiff had promiſed Performance of ſuch an Act, he promiſed to do ſuch an Act, held good, and that the *quod cum* was a ſufficient Averment. *Har.* 2.

21. In *Aſſumpſit* to pay the Plaintiff as much as he deſerved, if he would board the Defendant as often, and as many Times as the Defendant pleaſed, and Plaintiff alledged, that he did board him at the Day of the Promiſe, and ſeveral other Days and Times afterwards; and the Declaration was held good upon a ſpecial Demurrer, tho' the Plaintiff had not ſhewed what Days, or to what Day he boarded him. *Ray.* 2.

22. In *Aſſumpſit*, the Plaintiff declares that *A.* was indebted to him, and *B.* was Reciever of *A.*'s Rent, and he appointed *B.* to pay the Plaintiff out of *A.*'s Rent, and the Plaintiff and *B.* accounted together, and found in Arrear; and he promiſed to pay, if he would forbear a Month after the Rent-day, good, without averring he had any Rent in his Hands. *Ray* 211.

23. In *Aſſumpſit*, if the Plaintiff would Endeavour and Labour, that *A.* ſhould marry *B.* the Defendant promiſed to pay, *&c.* and the Plaintiff averr'd that he *Omnibus modis quibus poterit conatus eſt & elaboravit* to perſuade him, and that the Marriage took Effect, held good. *Ray.* 400.

24. In an Action for not paying Money at the Exchequer, it is neceſſary to alledge in what County the Exchequer is. *Stile* 59.

25. If one Promiſe to pay Money out of the Freight of a Ship, in an Action for Non-payment, the Plaintiff ought to aver what was due. *Stile* 220.

26. In an Action upon an *Aſſumpſit*, if the Conſideration be Executory; as if one Promiſes to do ſomething to me, in Conſideration of ſomething to be done before by me, to or for him, if I will ſue him for that he is to do for me, I muſt aver, that I have done that which was firſt to be done by me, for till that be done I may not maintain an Action upon the Promiſe. 2 *Cro.* 583. *Pain* v. *Baſtwick.*

27. And where 'tis Executory, and averr'd that 'tis executed, when indeed it is not, the Defendant may ſhew it ſpecially, and may take Iſſue as well for not performing the Conſideration Executory, as upon the Promiſe; but if he pleads generally *Non Aſſumpſit*, he can call the Performance of the Conſideration Executory, and ſo it is upon a Promiſe to do any thing upon Condition.

28. And if a certain Time and Place was agreed on for doing the Thing agreed on, muſt ſet it forth to be done accordingly.

29. As if one Promiſe to me, that in Conſideration I will forbear my Debt till ſuch a Day, he will pay me, *&c.* I muſt ſhew I did forbear; for if I ſue it within the Time, the *Aſſumpſit* and Action is gone.

30. Where a Place was held Neceſſary to be ſet forth, where the Plaintiff lent the Defendant the Money. 2 *Cro.* 598. *Johns* v. *Bowen.*

31. Judgment reverſed, becauſe the Plaintiff did not ſhew for what the Defendant was indebted to him, but only generally in the Sum of 40 *l.* *Mayor* v. *Harte.* 2 *Cro.* 642.

32. An Attorney, in an Action upon the Caſe may declare for ſo much, due *pro opere*, *&c.* and give his ſolliciting in Evidence. *Skinner* 218. *Ambroſſe* v. *Roe.*

33. *Aſſumpſit*, the Plaintiff declares for Money won at a Game called *Hazard*, good, without a ſpecial Promiſe. 2 *Vent.* 175.

34. The Plaintiff declared, that he intended to remove ſuch Goods, and the Defendant promiſed to ſee them forth-coming, after a Verdict good, without ſhewing that the Goods were his. *Vent.* 211.

35. *Aſſumpſit*, by a Carrier for bringing Goods from *York* to *London*, is not ſufficient that he brought the Goods to *London*, without ſhewing into what Pariſh and Ward. 1 *Syd.* 178.

36. In a Declaration upon a Promiſe to ſave harmleſs from a Suit, it is not neceſſary to ſet forth preciſely how he was impleaded, but generally that he was impleaded in ſuch a Court, in ſuch an Action. 2 *Cro.* 10. *Foſter* and *Clement*.

37. *Yelv.* 18. *Soprani and another* againſt *Skarro.* Where the Defendant promiſed to build a Wall, Parcel of a Meſſuage, during ſuch a Term, agreed to be demiſed by *Zanches* to *Welch*, but the Declaration in charging the Defendant with a Breach of Promiſe, does not ſhew that *Zanches* did demiſe the Meſſuage; ſo that if he did not, it was impoſſible for the Defendant to build it during the Term, and Declaration held ill.

38. Where the Declaration was, that in Conſideration the Plaintiff would deliver the Defendant's Cattle out of the Pound, he promiſed to pay him, or ſave him harmleſs; and avers, that for the Delivery thereof, an Action was brought againſt him, and a Recovery; this was held ill, for want of an Averment that he did deliver them. 2 *Sho.* 329. *Well* v. *Thomſon.*

39. Where the Declaration was, that in Conſideration that the Plaintiff would, at the Requeſt of the Defendant, repair Part of a Houſe, the Defendant promiſed to pay ſo much; and then the Plaintiff alledges that he did repair it; but held inſufficient, becauſe he did not ſet forth the Performance purſuant to the Conſideration, in ſaying he repair'd it at the Requeſt of the Defendant; but to repair a Part of a Houſe, and not particularizing what Part, was held well enough.

40. The Declaration was, that in Conſideration the Plaintiff would deliver to the Defendant's Son, ſuch Wares as the Son ſhould deſire, the Defendant promiſed the Plaintiff to pay for them; and then avers that he did deliver certain Wares to the Son, and the Defendant refuſed to pay for them. *Roll* Ch. Juſt. held, that the Acceptance of the Wares is an actual Deſire; and it was not neceſſary preciſely to ſet forth an actual Deſire. *Stile* 163. *Johnſon* v. *Abington.*

41. Where the Declaration ſet forth, that the Defendant, in Conſideration that the Plaintiff would let the Defendant a Booth in *Sturbridge* Fair, the Defendant promiſed to pay 10 *l.* and to pay the Plaintiff for all ſuch Wine and Hops as ſhould be ſpent in the Booth during the Fair; the Declaration was inſufficient after a Verdict, becauſe the Plaintiff had not alledged that he gave Notice how much Wine and Hops he laid in during the Fair; nor that he made a Demand of the Payment of any Sum due, that the Defendant might know how much he was to pay. *Stile* 172. *Harris* v. *Gibbons.*

42. Where the Declaration was for Goods ſold and deliver'd, and a Promiſe to pay ſo much as they ſhould be reaſonably worth, it was adjudged as good, as if it had been as much as they were reaſonably worth. 3 *Mod.* 190. *Bowyer* v. *Lenthall.*

43. In Conſideration the Plaintiff would pay the Defendant 20 *l.* he promiſed to aſſure Land by a reaſonable Aſſurance.

44. Where the Declaration ſet forth, that the Defendant at *Briſtol* was indebted for Goods ſold and delivered, and then and there promiſed to pay, it is ſaid to be held ill, becauſe it was not ſaid where the Goods were ſold and deliver'd. 1 *Show.* 395. *Crabb* v. *Bowdler.* 1 *Keb.* 679. *Inman* v. *Patie.* 1 *Keb.* 669. *Patil* v. *Kent.* 1 *Keb.* 513. *Dorrington* v. *Slipper.* 1 *Keb.* 500. *Peacock* v. *Burrell.* 1 *Keb.* 468. *Bowler* v. *Marſhal.* 1 *Keb.* 419 *Aniſon* v. *Starke.* 1 *Keb.* 382. *Saunders* v. *Godfrey.*

45. Where the Declaration had not ſet forth, that the Defendant promiſed to pay, in Arreſt of Judgment upon the Writ of Inquiry, that Exception was diſallowed; for the Promiſe being alledged to be made to the Plaintiff, and no other Perſon being named in the Declaration, it ſhall be

intended to be made by the Defendant. 1. *Lut.* 237, 8. *Remington* v. *Taylor.*

46. Where it was held, that upon mutual Promiſes, Performance need not be averred. 1 *Lev.* 87. *Anonymus.*

47. To declare for Goods deliver'd to the Defendant, and a Promiſe to pay, is void for want of the Word *Sold.* 1 *Leon.* 157. *Anonymus Noy* 59. *Harewood* v. *Hammond.* 2 *Keb.* 438. *Gatton* v. *Brown.*

48. In Conſideration of the Delivery of Poſſeſſion of a Houſe, *&c.* that the Defendant promiſed to pay ſo much, the Plaintiff need not ſhew any Title to the Houſe. *Ben.* 151.

49. In Conſideration the Plaintiff would abate of his Debt, the Defendant promiſed to pay; the Plaintiff muſt ſhow how he abated his Debt, and it is not ſufficient to ſay he abated ſo much. *Gouldſb.* 156.

50. In *caſe* the Plaintiff declared upon the Defendant's being indebted to the Plaintiff, and found in Arrear ſo much, which the Plaintiff had not paid, and without ſaying *Aſſumpſit ſolvere*; *quære* if good, 1 *Syd.* 306.

51. In Conſideration that the Plaintiff had procured *J. S.* to ſurrender ſuch a Houſe, *quod defend' ſolverit*, it was held ill for want of *Aſſumpſit ſup' ſe*, after a Verdict. *Stile* 246. 2 *Roll's* 464. *Apres* 306. *Noy* 50. *Cro. El.* 913. *Stile* 255, 28.

52. *Aſſumpſit* upon an Agreement to pay 2 *l. per Annum*, and the Breach aſſigned was for two Years, ending at ſuch a Day, which was two Years and a Day, yet the Declaration good. 1 *Syd.* 409.

53. Where the Declaration ſet forth, that Differences had ariſen between the Plaintiff and Defendant, and they ſubmitted to the Award of *J. S.* who awarded, that the Defendant ſhould pay to the Plantiff 30 *l.* out of the Eſtate of one *Woolley*; but held ill, becauſe it did not ſhew whether the Defendant was Executor, Adminiſtrator or Truſtee, or how chargeable out of that Eſtate. 2 *Lev.* 235. *Adams* v. *Statham.*

54. Where the Award mentions, that the Party ſhall have ſufficient Notice of a Thing to aſſign a Breach for Non-performance, you muſt ſhew what Notice was given, that the Court may Judge of the Sufficiency of it. 2 *Syd.* 67. *Anonymus.*

55. Where an Averment of Notice was held to be not neceſſary. *March* 108.

Of Declarations on Bills of Exchange, and Promiſſory Notes.

1. The Cuſtom of Merchants concerning Bills of Exchange, is Part of the Common Law, of which the Judges will take Notice *ex Officio*; as it was reſolved in the Caſe of *Carter* and *Dowriſh*; and therefore 'tis needleſs to ſet forth the Cuſtom ſpecially in the Declaration; for 'tis ſufficient to ſay, that ſuch a Perſon, according to the Uſage and Cuſtom among Merchants drew the Bill. *Carthew* 270. *Williams* v. *Williams.*

2. And it was adjudged in the Caſe of *Mogadata* v. *Holt*, 1 *Show.* 317. that if the Cuſtom of Merchants be recited, and be ill recited, and differs from the Fact ſet forth, yet inaſmuch as the Setting it forth is Surpluſage, and the Judges are obliged *ex Officio* to take Notice of the Cuſtom of Merchants, the Declaration will not be ill.

3. And where an Action is brought upon the ſecond *Bill of Exchange*, neither the Firſt or Third having been paid, it is not neceſſary by way of Averment to alledge, that the Firſt or Third was not paid; for the Allegation of the Sum contained in the Bill's not being paid is ſufficient, and ſupply'd the Want of an Averment.

4. So to ſay, the Perſon upon whom it was drawn could not be found, was held ſufficient, without ſhewing they made an Enquiry after him.

5. Nor is it neceſſary to lay an actual Promiſe after the Proteſt made, for the Law raiſes a Promiſe by Implication. *Carthew* 510. *Starke* v. *Cheeſman.*

6. *Note*; A Man can't declare upon a general *Indebitatus Aſſumpſit*, on a *Bill of Exchange*, for want of a Conſideration; for it is but an Evidence of a Promiſe to pay, and therefore he muſt declare upon the Cuſtom of Merchants, or elſe upon a general *Indebitatus Aſſumpſit* againſt the Drawer, for Money received to his Uſe. *Salk.* 125. Q. whether a promiſſory Note, which is made as a *Bill of Exchange* by the Statute, is good without Value received.

7. A Note for Payment of 60 Guineas when the Defendant ſhould marry *E. P.* the Plaintiff can't declare upon this Note, as upon a *Bill of Exchange*. 4 *Mod.* 242, 244.

8. To declare upon a promiſſory Note, *ſecundum uſum Mercatorum* is ill, 1 *Salk.* 129.

9. Caſe upon a *Bill of Exchange* upon the Cuſtom of Merchants, brought by the laſt Indorſee againſt the laſt Indorſor; and good, without ſuing the Drawer and the reſt ſucceſſively; for he hath his Election to ſue the one or the other. *Show.* 442.

10. If one declares on a *Bill of Exchange* againſt the Acceptor, payable ſo many Days after Date, and ſhews the Acceptance and Promiſe was after the Bill was due and payable; and to pay *ſecundum tenorem Billæ præd'*, the Declaration is good, for the Promiſe is to pay preſently, & *ſecundum tenorem Billæ* ſhall be rejected as repugnant. *Salk.* 127.

11. A Declaration on a *Bill of Exchange* payable at two Uſances drawn at *Amſterdam*, is not good, without ſhewing what Uſances are. *Salk.* 131.

12. If a Declaration on the firſt *Bill of Exchange* wants an Averment, that the Firſt and Second are not paid, it is aided after a Verdict. *Salk.* 130. 3 *Keb.* 645. *Smart* v. *Dean.*

13. Where a Cuſtom is laid generally *int' al' Perſonas uſitat' & approbat'*, it is ill. 1 *Lutt.* 895.

14. On a *Bill of Exchange*, where it was omitted, that the Bill was drawn *ſecundum conſ. Mercatorum*, and yet held well. 1 *Lut.* 277.

15. An Action for Part on a *Bill of Exchange* held ill, the Contract being entire, unleſs he ſhews how the other Part was ſatisfied. *Salk.* 65.

16. *H.* draws a *Bill of Exchange* upon *P.* payable to *S.* who indorſes it to *A.* who indorſes it to *C. C.* brings his Action againſt *H.* in Bar of this Action, and adjudged a good Plea; for by ſuing of the Drawer he has waved his Liberty of ſuing *A.* and *S.* for if he may ſue *S.* then he may *H.* and *H.* be doubly charged. *Skinner* 255.

17. The Plaintiff declares upon a *Bill of Exchange* againſt the Drawer, ſetting forth, that the Plaintiff had paid the Bill for the Honour of the Indorſor, and the Cuſtom was laid generally for Merchants and other Perſons, without ſaying trading and uſing Commerce at *London*, or within this Kingdom; and therefore upon a Writ of Error the Judgment was reverſed. *Lut.* 89. 2 *b. Fairley* v *Roch.*

18. In a Declaration upon a Promiſſory Note, 'tis ſufficient to ſay the Drawer made a Note, and it ſhall be implied that he ſign'd it. *Modern Caſes in Law and Equity* 307. *Elliot* v. *Cowper*; tho' the Act of Parliament which beſtows Credit upon ſuch Notes, and a Remedy to recover on them where there was none at Law, enacts that all Notes ſigned, &c.

19. Where an Action was brought againſt the Drawer of an Inland *Bill of Exchange* for Default of the Indorſor, and the Declaration did not ſet forth Notice to the Drawer; it was held ill upon a Writ of Error after a Verdict. *Mod. Caſe in Law and Equity* 43. *Lawrence* v. *Jacob.*

20. Error aſſigned in the Declaration, that it was not alledged that the Plaintiff was a Merchant at the Time of drawing the Bill, yet held well enough. 3 *Cro.* 301. *Barnaby* v. *Rigalt.* 2 *Cro.* 306. *Caſtle* v. *Taylor*, in *Eagechild's* Caſe, *Hetley* 167.

21. If a Bill be accepted, there's no Occaſion to alledge a Demand. *Stile* 370. *Anonymus.*

22. It is not neceſſary to ſhew, that the Perſon to whom the Bill is payable is a Merchant, and of late ſince this Caſe of *Chat* and *Edgar*, in 1 *Keb.* 636. it has been held, that the very Drawing a Bill upon another, makes them both Merchants for this particular Purpoſe.

23. Where in a Declaration it was alledged that a Bill was paid by *P. A.* and *L. A.* for the Honour of the Defendant; but it was not alledged to whom the Money was paid; for it ought to have been preciſely alledged, that the Money was paid to the laſt Indorſee, becauſe the Cuſtom is ſo alledged; that if any Perſon or Perſons pay the Bill to the laſt Indorſee, for the Honour of him to whom the Bill was firſt payable, and who firſt indorſed the Bill, that then he who undertook to pay the Bill for the Honour of the Drawer, is liable to pay it to the firſt Indorſor, to whom the Bill was firſt payable; and therefore the Declaration ought ſtrictly to have purſued the Cuſtom; but yet Judgment was affirmed, and the Reaſon was, becauſe it was after a Verdict which had found the *Aſſumpſit*, which could not have been without Proof that the Money was duly paid. *Lut.* 899. *Levin* v. *Brunetti.*

Declarations in Aſſumpſit *held ill for Want of a proper Averment.*

1. Where the Defendant was to deliver a Parcel of Gum then upon the Seas, as ſoon as it came to the Port of *London*, and that it ſhould be as good as other Gum mention'd in the Declaration; *Breach aſſign'd for not delivering good Gum*; the Declaration was held ill for want of an Averment, that the Gum delivered was the ſame as was upon the Seas, and that it came to the Port of *London*; for if it was another Parcel, then it is not within the Promiſe, and the Declaration ought to have ſhewn, that the Gum deliver'd was the ſame agreed to be deliver'd, and then to have ſhewn that it was not good Gum according to the Promiſe. 2 *Cro.* 235. *Weſton* v. *Dyke.*

2. Where the Defendant promiſed to take the Plaintiff's Son an Apprentice, and find him Meat, Drink and Apparel; it is no good Aſſignment of the Breach, to ſay the Defendant did not find him with Meat, Drink and Apparel, without averring the Plaintiff put him Apprentice. *Talkham* v. *Wrigg.* 2 *Cro.* 406.

3. Where *T. O.* had acknowledged himſelf to be indebted to the Plaintiff in 10 *l.* for ſeveral Treſpaſſes which the Plaintiff had agreed to accept of, and the Defendant, in Conſideration the Plaintiff would permit the ſaid *T. O.* to carry out his Goods, and acquit him of the 10 *l.* the Defendant would pay it; the Declaration was not good, by ſaying he did acquit him, and ſuffer'd him to carry out the Goods; but he muſt ſhew how he acquitted him, for it muſt be by Writing. *Lenerett* v. *Rivett*, 2 *Cro.* 503.

4. In an Action upon the Caſe againſt an Executor, upon a Promiſe made by the Teſtator to pay 20 *l.* at his Death, the Plaintiff need not aver that the Teſtator did not pay it in his Life-time. *Hardr.* 221. *Greenway* v. *Hornblow.*

5. In an Action upon the Caſe againſt *Lovering*, upon a Promiſe made by him to the Plaintiff to pay them 84 *l.* out of the Freight of a Ship; *Roll* Ch. Juſt. the Plaintiff ought to have averr'd, that there were Monies due for the Freight of the Ship; otherwiſe how can it be known whether the Monies due can be paid out of them, and the Judgment was arreſted. *Stile* 120. *Chaſe* and *Jones* v. *Lovering.*

6. In Conſideration the Plaintiff would pay the Defendant 70 *l.* he promiſed to aſſure Lands by ſuch reaſonable Aſſurance, as by the Plaintiff's Counſel ſhould be adviſed, who adviſed a Feoffment, with a Covenant to diſcharge and ſave harmleſs from all Incumbrances; the Breach not well aſſigned; for this was not an Aſſurance within the Promiſe. *Coles* v. *Kindor*, 2 *Cro.* 571.

In what Inſtances the Declaration was held good without an Averment, and where not, relating to

Muskett v. *Cole*, *Cro. Eliz.* 133. The Delivery of Bills and Obligations.
Rigg v. *Clarke*, *Cro. Eliz.* 194. A Horſe lent and abuſed.
Hopkins v. *Stapers.* Delivery of Goods.
Yelv. 176. *Rock* v. *Rock.* A Promiſe to go a Journey.
Lut. 224. *Stinton* v. *Yates.* Maintenance of an Infant.

Hardr. 1, 2, 3. *Ernly and others* v. *Doddington.* A Promiſe upon a Horſe-Match.

Godb 13. *Anonymus.* Ill upon a Conſideration of Forbearance, and does not aver, that in Fact he did give a Day of Payment.

2 *Cro.* 235. *Weſton* v. *Dyke.* No Averment, that the Goods deliver'd were agreeable to thoſe in the Conſideration.

2 *Cro. Stainewid* v. *Leebek.* No Averment, that the Bond was diſcharged upon a Promiſe to pay ſo much in Diſcharge of a Bond.

1 *Keb.* 669. *Baxter* v. *Jackſon.* To the Delivery of Beer to the Houſe of the Defendant, and in Conſideration thereof the Defendant warranted Money due by *J. S.* to the Plaintiff.

What Declarations have been held inſufficient, and what not, relating to

Cro. Eliz. 292. *Gregory* v. *Nevil.* Relinquiſhing Rent.
352. *Pipe's* Caſe. A Promiſe to ſave harmleſs.
561. *Roſs* v. *Moſs.* A Promiſe to diſcharge Suits.
848. *Coulſton* v. *Carr.* *Super ſe Aſſumpſit*, and does not ſay to whom.
859. *Clerk* v. *Palady.* Permiſſion to enjoy Lands.
Yelverton 76. *Raynay* v. *Alexander.* Buying of 15 Tod of Wool to be choſen by the Plaintiff out of 17.
87. *Dorrington* v. *Eaſt.* A Promiſe to make a Leaſe on the Plaintiff's procuring 6 *l.* to be lent to the Defendant.
184. *Smith* v. *Jones.* Forbearance.
49. *Allen* v. *Randall.* A Promiſe to procure a ſufficient Man to be bound.
207. *Roſs* v. *Pie.* A Promiſe to ſave harmleſs from a Recognizance.
220. *Coveney* v. *Wooden.* A Promiſe to ſave harmleſs from all Loſſes by dwelling in ſuch a Houſe.
19. *Jennings* v. *Hatley.* Marriage.
39. *Heyford* v. *Reeve.* A Promiſe to produce a ſufficient Record.
110. *Lord Mordant* v. *Walden.* A Promiſe to pay Money on ſealing an Indenture.

2 *Show.* 238. *Middleton and others* v. *Whitehead.* For Money receiv'd to a Bankrupt's Uſe.

3 *Lev.* 335. *Noble* v. *Holbead.* Money receiv'd after the Day of the Promiſe.

Moor 854. *Babington* v. *Lambert.* Money receiv'd to the Plaintiff's Uſe.

1 *Roll's Rep.* 391. *Beckingham and another* v. *Vaughan.* For Money deliver'd to the Plaintiff's Uſe.

Hard. 5. *Barnehurſt* v. *Calbott.* Forbearance to ſue a third Perſon.

Hard. 221. *Greenway* v. *Horneblow.* A Promiſe made by Teſtator, and the Action againſt the Executor.

Noy 185. *Dixon* v. *Williams.* A Promiſe for Money laid out and expended.

1 *Lev.* 171. *Armitage* v. *Diſon.* Miſcaſting the Sum amended.

Hetl. 106. } *Holmes* v. *Chenie*. An *Inſimul Computaſſet*.
113. }

Palm. 559. *Besfich* v. *Coggil.* A Promiſe upon an *Inſimul Computaſſet* of Money due from the Defendant himſelf and his Son.

2 *Cro.* 602. *Bard* v. *Bard.* Upon an *Inſimul Computaſſet* for Money by Defendant, and for a Legacy.

Hutton 27. *Bigg* v. *Malin.* ——— A Promiſe by an Adminiſtrator.

Popham 177. *Goodwin* v. *Willougby.* *Inſimul Computaſſet* againſt *Joan* the Wife of *T. Willoughby*, and ſhews not whether Executor or Adminiſtrator.

Hob. 69, 77. *Auſtin* v. *Gervaſe.* An *Aſſumpſit* to give a Bond, and the Defendant to deliver a Horſe.

2 *Brownl.* 273. *Anonymus.* Goods delivered to the Plaintiff in Pawn, in Conſideration of Delivery, a Promiſe to pay the Debt.

Godbolt 358. *Randall* v. *Harvey.* Conſideration of relinquiſhing of a Suit.

Godbolt 412. *Payne* v. *Colledge.* A Promiſe to endeavour to cure of a Diſeaſe.

Godbolt *Totman* v. *Hopkins.* A Promiſe to deliver Barley next Harveſt, and the Time of the next Harveſt not ſet forth.

1 *Roll's Rep.* 382. *White's* Caſe. A Promiſe to deliver all the Corn, &c.

1 *Roll's Rep.* 58. *Chappell* v. *Woodham.* Omiſſion to whom Payment was to be made.

1 *Roll's Rep.* 173. *Anonymus.* A Promiſe to provide Neceſſaries for *J. S.*

Stile 27, 88. *Bower* v. *Southwell.* A Promiſe to pay Money for Currants ſold, and the Plaintiff to diſcount.

Stile 62. *Baker* v. *Edmonds.* A Promiſe to an Aſſignee under a Commiſſion of Bankrupt.

Stile 243. *Child* v. *Guiar.* A Special Verdict.

Stile 410. *Dorman* v. *Snag.* A Promiſe of Forbearance.

Stile 419. *Bunnworth* v. *Gibbs.* A Promiſe to leave off a Trade.

Stile 57. *Iunier* v. *Jeffry.* Forbearance of a Suit.

1 *Leon.* 123. *Musket* v. *Cole.* Where it was held ſufficient, tho' not ſhewn that the Defendant had ſuch Bonds when he promiſed to deliver all the Bonds he had, &c.

Yelv. 176. *Rock* v. *Rock.* Inſufficient for want of a proper Averment, that the Journey the Plaintiff alledged was his next Journey, becauſe the Defendant was to pay before his next Journey.

Hob. 95. *Bayle* v. *Gird.* That the Plaintiff would die ſixty Kerſeys, and that he did die all amounting to fifty-nine; and held well enough, and the Damages were aſſeſs'd *occaſione detentionis debiti*; whereas it ought to have been *occaſione non performationis.*

1 *Leon.* 335. *Hoskins* v. *Struper.* Plaintiff ſold Defendant Fiſh to be ſhipped from *Briſtol* to *St. Snear*, and to bring back from thence Goods to the Value; he alledges he did ſo, but does not ſay whoſe Goods they were he returned with; and held ſufficient.

Poph. 206. *Anonymus.* A Promiſe to diſcharge a third Perſon, Plaintiff ſays he did diſcharge him, but does not ſhew how.

1 *Ventr.* 156. *Stone* v. *Waddington.* An Action in the Court of *York*, for Goods ſold and deliver'd, but does not ſay where; and therefore ill, and the Judgment was upon a Writ of Error reverſed. 2 *Lev.* 87. *Hanſhip* v. *Coater*, 1 *Syd.* 87. *Godfrey* v. *Saunders.* 1 *Keb.* 164. *Hanſhip* v. *Carter.*

Aderton v. *Dunſtar.* 2 *Cro.* 247. The Promiſe varying form the Conſideration in the Sum, though but in a Penny; for it is not poſſible to make an *Aſſumpſit* to pay that which was not the Bargain.

Buſeby v. *Hadderton*, 1 *Bulſt*. 179. But where it appear'd to be the Miſpriſion of the Clerk, as in caſting up the Sums *in toto ſe attingunt*, it was amended.

4. *Leon*. 122. *Herne* v. *Crowes*. That the Plaintiff promiſed the Defendant, that when he had bought Furs, concerning which they had a Communication, he ſhould have ſuch a Quantity as he pleaſed at an equal Price; and the Defendant in Conſideration thereof, promiſed he would not ſpeak to the Merchants about them.

Where Declarations in Caſe upon Contracts were held well after a Verdict. See more of this hereafter.

1. In an Action upon the Caſe upon an Agreement, and Breach aſſign'd, that the Defendant *non performavit agreamentum prædict'*, upon which Iſſue was join'd; and upon a Writ of Error in the King's Bench, on the Judgment in the Common Pleas, the Judgment was affirmed; and it was ſaid that it had been good upon a Demurrer, much more after a Verdict. *Knight* v. *Keech*, *Mich* 4 *W. & M. Rot*. 60. *Skinner* 344.

2. Where there is a Concurrence neceſſary to the Performance of a Promiſe at ſuch a Day, and it is laid, that at that Day the Defendant did not do it; after a Verdict it ſhall not be preſumed he did it before, becauſe it ſhall not be intended the Plaintiff was there before. *Harmon* v. *Owden*, *Salk*. 140.

3. *Stile* 19. *Long* v. *Bennett*, the Plaintiff declared, that the Defendant would not deliver *an Acre of Wood* which he had ſold, and held well after a Verdict.

Fourthly, **Of the Plea, Replication, Rejoinder, Iſſue, Traverſe**, &c.

1. Where a Concord Executory in Part was held no Plea. *Rayne* v. *Orten*, *Cro. Eliz*. 306.

2. Where not Guilty was held a good Plea. *Corbyn* v. *Brown*, *Cro. Eliz*. 470.

3. Accord is a good Plea to an *Aſſumpſit*, given upon a mutual Promiſe at the Time of the *Aſſumpſit*, otherwiſe not. *Jones Car*. 2. 165.

4. In an *Aſſumpſit* an Accord was pleaded, that the Defendant was to do ſeveral Things, and averr'd a Performance of Part, and a Tender to perform the other Part, was held bad. *Jones Car*. 2. 6.

5. Where a Thing is pleaded by way of Concord it is iſſuable; but if the Concord is not executed by giving and receiving, it can't be pleaded in Bar to the Action. Therefore the beſt Way of Pleading it, is by ſetting it forth, that the Thing was given and received in full Satisfaction, but both are traverſable. 5 *Mod*. 87.

6. Caſe on a Promiſe to pay Money, if he does not make it appear to be paid to *A*. it is no Plea that he did make it appear to be paid, without ſhewing how; in an *Aſſumpſit*, the Defendant pleaded in Bar an Action of Account depending for the ſame Money, and held not good.

7. Where the Defendant promiſed to appear to a Recognizance at the Aſſizes, it is no Plea that he brought a *Certiorari*, which was allowed; for he ought to have appear'd, and procur'd his Appearance to be recorded. 2 *Cro*. 282. *Ruſſe* v. *Pye*, *Telv*. 207.

8. Where the Subſtance of the Defendant's Plea was ſaid to diſcharge the Promiſe. *Telv*. 23. *Shelbury* v. *Scotsford*.

9. Where the Plaintiff declared in an *Indebitatus Aſſumpſit*, and the Defendant pleaded *cauſa actionis non accrevit infra ſex annos*; the Plaintiff replied, that the Inteſtate to whom the Promiſe was made died ſuch a Day,

a Day, and that no Adminiſtration was granted till ſuch a Time; and then Adminiſtration was committed to the Wife, & *ſic cauſa actionis accrevit*, &c. and concluded to the Country; held ill, for they ought to have concluded with an Averment. *Curry and his Wife Adminiſtrators* v. *Stephens*. 4 *Mod.* 376.

10. Where the Plaintiff declares that upon a Communication about buying 300 Ewes, and 14 Rams, the Defendant affirm'd, and warranted them to be ſound, and were then worth nine Pounds a Score; Breach, that at that Time they were not ſo. The Defendant pleaded, that the Bargain was for Ewes and Rams then going to *Wildmore* in *Lincolnſhire*, and were ſound, and worth nine Pounds *per* Score, and that he might have ſold them for that Price; this was held no good Plea, becauſe the Defendant had not anſwer'd the Subſtance of the Complaints, which was the Warranty and Promiſe; and beſides, this being a tranſitory Matter, he ought to have pleaded that Matter where the Plaintiff had laid his Action. *Redhead* v. *Harper*, *Yelv.* 114.

11. Where the Plaintiff declared, that in Conſideration *Anne*, then the Plaintiff's Wife, would marry one *Thomas Maſon*, at the Requeſt of the Defendant, the Defendant promiſed, after the Death of *Thomas Maſon*, to pay to the ſaid *Anne* 40 *s.* a Year for her Life, and ſhews, that thereupon ſhe did marry the ſaid *Maſon*, and that he died, and that ſhe married the Plaintiff; the Defendant pleads in Bar a Releaſe by Deed by *Thomas Maſon*, during the Marriage, whereby he releaſed all Actions, Quarrels, Controverſies, Claims and Demands whatſoever. It was adjudged, that this Releaſe did not diſcharge the Promiſe, becauſe, although the Promiſe was preſent, yet the Performance of it was future. But if the Releaſe had been by expreſs Words of all Actions and Quarrels, &c. which he or his Wife might have, then the Promiſe had been releaſed. *Yelv.* 156. *Belcher* v. *Hudſon*.

12. Where the Defendant pleads Nonage to an Action for Cloths, it is incumbent upon the Plaintiff to reply they were for Neceſſaries. *Palmer* 361. *Cheve* v. *Cheſter*.

13. A Recovery in *Aſſumpſit*, it is no Bar to an Action of Debt upon a Bond. *Owen* 109.

14. To an Action upon an *Aſſumpſit*, it is a good Plea for the Defendant to ſay that ſuch a Day before the Breach, the Plaintiff diſcharg'd him from the Performance of the Promiſe, without ſhewing how. 3 *Cro.* 384. 2 *Cro.* 620. 2 *Leon.* 215.

15. The Defendant pleads Infancy to an Action upon an *Inſimul Computaſſet*, where the original Contract was for Neceſſaries, and held a good Plea, for the Infant may be miſtaken in the Account; and upon the Trial, Evidence is not to be given of the Value of the Things, but only upon the Account it ſelf. *Latch* 169. *Wood* v. *Witherick*.

16. To a Declaration in *Aſſumpſit*, upon a Contract to pay ſo much at a Day to come, and the Plea was, that the Plaintiff diſcharged him of the Promiſe, and does not ſhew how, and held not good. 1 *Roll's Rep.* 43, 44. *Blackead* v. *Cock*.

17. To plead to an Action of *Aſſumpſit*, for Non-payment of Money upon an Award it is no Plea, that the Defendant was always ready to pay, without bringing the Money into Court. 1 *Lut.* 283.

18. How to plead a Letter of Compoſition. *Vide* 1 *Lut.* 271. In the Caſe of *Trippet* v. *Naylor*.

19. To plead a Recovery in a former Action, in a Court that had no Juriſdiction of the Cauſe, was held ill. 3 *Lev.* 234. *Mico* v. *Morris*.

20. In pleading a Recovery below in an Inferiour Court, and varying in the Sum, yet it is well enough, with an Averment that it was the ſame Cauſe of Action. 3 *Keb.* 263. *Symons* v. *Willoughby*.

8. In pleading a Promiſe diſcharg'd before the Time of Performance, in the Caſe of *Williams* v. *Benſon.* 3 *Keb.* 211. was held well enough, without ſhewing how.

9. If a Man declares for Money payable at ſeveral Days, and miſtook his Caſe, and it was againſt him upon a Verdict, yet that Judgment ſhall be no Bar to a new Action laying the Money to be payable upon Requeſt, no more than if a Man declares upon a Promiſe founded upon two Conſiderations, and ſo *vice verſa*; and it is found againſt him; that ſhall not be pleaded in Bar to a new Action. 1 *Roll's Rep.* 391. *Paine* v. *Selle.*

10. A Verdict in Caſe for Goods ſold and deliver'd for the Defendant, is no Bar to an Action of Trover for the ſame Goods. 2 *Lev.* 37.

What Pleas in Aſſumpſit *have been held good, and what not good, for want of ſufficient Certainty, or otherwiſe, relating to*

Woolman v. *Tye*, *Cro. Eliz.* 179. Matter waved by the Inſufficiency of a Plea.
Cro. Eliz. 476. *Thornton* v. *Kemp.* Forbearance.
543. *Gower* v. *Capper.* The Delivery of a Bill.
2 *Cro.* 690. *Holms* v. *Foſtwood.* Payment to a third Perſon.
2 *Keb.* 353. *Ludleham* v. *Stacy.* Tender, and being always and yet ready to pay.
550. *Bucknall* v. *Swinnicke.* By way of Accord.
3 *Keb.* 312. *Ravenſcroft* v. *Fonk.* Plea amounting to the General Iſſue.
397. *Alderſon* and *Deſely* v. *Miller.* Pleading a Releaſe.
1 *Ventris* 252. *Anonymus.* A Plea of Tender.
1 *Lutt.* 227. *Johnſon and his Wife* v. *Mapletoſt.* The like.
2 *Mod.* 311. *Parrington* v. *Lee.* } The Statute of Limitations to an *In-*
71. *Croſier* v. *Tomlinſon.* } *ſimul Computaſſet.*
1 *Mod.* 7. *Bucknall* v. *Swinnock.* A Plea amounting to the General Iſſue.
2 *Saunders* 424. *Webber* v. *Tirill.* The Statute of Limitations to an *Inſimul Computaſſet.*
1 *Syd.* 465. *Martin* v. *Delbo.* The like.
1 *Keb.* 235. *Brown* v. *Martin* } A Plea amounting to the General Iſſue.
228. *Hudſon* v. *Bryan.* }
3 *Keb.* *Browning* v. *Denham.* An Accord.
W. Jones 146. *Vere* v. *Delavall.* Infancy with a Traverſe of the *Aſſumpſit.*
Hetley 138, 139. *Bill* v. *Lake.* } Where the Statute of Limitations ſhall
85. *Holford* v. *Gibbes.* } be a Bar, and where not, and when to plead it, and when not.
1 *Bulſtr.* 39. *Dale* v. *Copping.* Infancy pleaded to an Action for a Cure.

1. In Action upon the Caſe, upon a Promiſe to do a Thing upon Requeſt, the Defendant pleaded a Requeſt on the 1ſt Day of *May*, in ſuch a Year, and the Statute of Limitations; the Plaintiff replies no Requeſt as the Defendant had alledg'd; which tantamounts to *modo & forma*, and upon this Iſſue there was a Verdict for the Plaintiff; and it was held that the Replication was good; for to ſay as the Defendant hath alledg'd, does not conclude the Day, or any Circumſtance, but the Subſtance of the Plea; if it did, 'twould then be only an immaterial Iſſue, which is help'd by the Verdict. *Hard.* 40.

2. In an Action for ſurcharging of Common, the Defendant pleads a Licenſe from the Lord; he ought to ſhew that there was ſufficient Common left for the Commoners, or elſe the Licenſe is not good. 2 *Mod.* 6.

3. If a *Bill of Exchange* be payable to *A.* for the Uſe of *B.* it is no Plea after *A.* hath indorſed this Bill, and paid it away; for the Drawer to ſay that *B.* was an Officer in the Exciſe, and indebted to the King, and that upon an Exchequer Proceſs, the Money contain'd in the Bill was extended in his Hands; for *B.* had only an equitable Intereſt in the Bill; *A.* to whom the Note was payable had the legal Intereſt, and by his Indorſement over for *Value receiv'd*, that Value receiv'd was for the Uſe of *B.* and the Indorſement over veſts the Property of the Bill, and the Money therein contained in the Indorſee. *Carthew* 5. *Evans* v. *Cramlington.*

4. Infancy pleaded in Bar to an Action upon a *Bill of Exchange*, was held a good Plea.

5. Intereſt on a *Bill of Exchange*, commences from the Demand; if no Demand till the Action brought, the Defendant may plead a Tender, and that he is yet ready. *Mod. Caſes* 138.

6. Where a Bill is indorſed by *A.* to *B.* for Goods ſold by *B.* and *B.* keeps it by him long after payable, by which it becomes not a good Bill, yet *A.* ſhall not plead in Bar this Bill given in Diſcharge of the Debt; for a Bill ſhall never be a Diſcharge of a Debt precedent, unleſs it is Part of the Contract that it ſhould be ſo. *Salk.* 124, 442.

7. If the Defendant pleads *Non Aſſumpſit infra ſex annos*, or *Plene adminiſtravit*, the Plaintiff need not ſhew the Original. *Show.* 272.

8. Where the Defendant loſes 85 *l.* to one Man, and 40 *l.* to another, and gives Notes for the Money, the Defendant can't plead the Gaming Act, by which all Securities are void for Money loſt, where the Sum loſt amounts to more than 100 *l.* 5 *Mod.* 351. *Stanhope* v. *Smith.*

9. Where a Bill was payable three Months after Date, and the Defendant pleads that ſuch a Day the Bill was exhibited, and that *Non Aſſumpſit infra ſex annos* before, and upon a *General Demurrer* it is ſaid to be ill, for it ought to have been, that the Cauſe of Action did not accrue within ſix Years. 2 *Keb.* 874. *Buckler* v. *Moor.*

Traverſe.

1. Where a Traverſe to a Plea of a Concord was held good. *Moor* 428. *Benham* v. *Springe.*

2. *Cro. Eliz.* 407. The ſame Caſe reported by the Name of *Bateman* v. *Spring.*

3. A Beaver Hat pleaded in Satisfaction to a *Quantum Meruit*, the Plaintiff by Proteſtation replies, that he did not give it in Satisfaction, and traverſes that he receiv'd it in Satisfaction, and upon a Demurrer the Traverſe was held good. *Young* v. *Rudd*, 5 *Mod.* 86.

4. If an Action upon the Caſe be brought, in which Damages ſhall be recovered *pro tanto*, the Defendant can't make Part of the Tort an Inducement to a Traverſe of the Whole. 1 *Bulſtr.* 116.

5. In an Action for Service from ſuch a Time, to ſuch a Time, the Defendant pleads, that Part of the Time he ſerved, and was paid, and traverſes that he ſerved to ſuch a Day, in ſuch Manner and Form, &c. this is an ill Traverſe; by this Traverſe he hath put Part of the Time in Iſſue, and hath concluded the Plaintiff from ſaying he had no ſuch Recompence, in that it was too little; and therefore the Defendant cannot make a Part of the Time of the Plaintiff's Service ſerve for an Inducement to traverſe the other. 1 *Saund.* 268, 269. *Osborn* v. *Rogers. Yelv.* 225.

6. The Defendant pleads an Award of three Things, the Plaintiff can't reply an Award of three Things, and another; but muſt ſet forth an Award of Four, and traverſe the Award of Three. *Plowd. Com.* 95. *Lutt.* 329.

7. The Plaintiff brings an Action, and declares that he deliver'd a Bond to the Defendant, to be redeliver'd upon Requeſt, and that he tore it in Pieces; the Defendant pleads that he deliver'd to him to be cancell'd, *Qu.* if he ought to traverſe the Delivery to redeliver. 1 *Roll's Rep.* 395.

8. Where the Defendant granted to the Plaintiff one thouſand Trees in ſuch a Wood, to be cut within three Years; and after they agreed, when the Plaintiff had cut ſome of the Trees, that if the Defendant would cut no more during the three Years, that after the three Years, he ſhould cut ſo many as to make up his Thouſand; and then the Plaintiff declares, that at the Time of the Promiſe he had cut eight Hundred only; and then ſhews, that after the three Years, the Defendant hinder'd the Plaintiff from cutting the Reſidue. The Defendant pleads, that at the Time of making the Promiſe, the Plaintiff had cut his thouſand Trees *abſque hoc*, that at that Time he had cut only eight Hundred as he alledged, and by the whole Court this Traverſe was held good; for the Plaintiff, by alledging that he had cut only eight Hundred, gave the Defendant an Advantage to deny that Matter, and put it in Iſſue; and by the Plaintiff's Demurring to the Plea, he has confeſs'd the Cutting of 1000 Trees, which was his full Bargain, and conſequently had no Action. *Tatam* and *Poulter* v. *Perient. Yelv.* 195.

9. Where an Action was brought againſt an Infant for Neceſſaries, who pleads Infancy, and the Plaintiff replies, that Part of the Goods ſold and deliver'd were for Neceſſary Clothes, and the Reſt for Neceſſary Meat and Drink; held an ill Replication, becauſe he ought to have ſhewn to which of the Promiſes he applied the Goods for Apparel, and to which the other Neceſſaries; and it was reſembled to the Caſe of *Thwaite* v. *Spence*, upon an *Indebitatus Aſſumpſit*, and a *Quantum meruit*, and the Defendant pleads to all the Damages but 4 *l.* *Non Aſſumpſit*, and to the 4 *l.* a Tender; and it was adjudged ill, becauſe he had not diſtinguiſh'd to which Promiſe the Tender was applied. 1 *Lutt.* 241, 242. *Swinburn* v. *Ogle.*

What held traverſable, and what not, relating to

Cro. Eliz. 201. *Smith* v. *Hitchcock.* A Promiſe to give a Bond.
250. *Anonymus.* Service.
Yelv. 171. *Dalby* v. *Cook.* A Promiſe upon an Account ſtated.
1 *Leon.* 154. *Jennings* and *Winche's* Caſe. Plea of a Bond in Satisfaction without a Traverſe.
1 *Cro.* 250. *Anonymus.* Where the Conſideration was held traverſable.

What Replications *in Caſe on* Aſſumpſits *have been good, and what not, relating to*

Ellis v. *Ellis*, 5 *Mod.* 368. A Plea by an Infant.
Lutt. 242. *Swinburne* v. *Ogle.* A Plea of Tender.
3 *Lev.* 57. *Lemun* v. *Tooke.* To a Plea by an Adminſtrator.

Fifthly, Of the Trial, Evidence and Damages.

1. Where the *Jury* find a *Verdict* upon another Conſideration, than is in the Declaration, it was adjudg'd, that the Plaintiff ſhall take nothing by his Bill. *Moor* 470. *Revera* v. *Baptiſta.*

2. So in the Caſe of *King* v. *Robinſon*, *Cro. Eliz.* 79. Where the *Jury* find, that the Defendant promiſed, in Conſideration of the Plaintiff's doing that in the Declaration, and ſomewhat beſides, he fails in all.

3. Where the Plaintiff declared of an abſolute Promiſe, and the *Jury* found a Conditional one, the *Judgment* was arreſted. *Cro. Eliz.* 149. *Muſtard* v. *Hopper.*

4. What was held a Mis-trial by the Mis-awarding the *Venire.* 1 *Cro.* 171. *Johnſon* v. *Tucke.*

5. Where it was ill, for that the *Jury* found leſs than the Plaintiff declared in the *Indebitatus Aſſumpſit.* *Bagnal* v. *Sacheverell*, *Cro. Eliz.* 292.

6. Where the *Jury* found the *Damages* by Reaſon of the Promiſe, and not by reaſon of breaking the Promiſe, and held ill. *Harriſon* v. *Newell*, *Cro. Eliz.* 781.

7. Where a Breach is aſſign'd in two Things, one whereof is not any Foundation for the Breach of the *Aſſumpſit*, and *entire Damages* given, the Judgment ſhall be for the Defendant.

8. Where the *Jury* find another *Aſſumpſit*, than that the Plaintiff declared upon, it is ill. *Munday* v. *Martin*, *Cro. Eliz.* 66.

9. Where *Damages* are given for *Breach* of an *Award*, that is good in Part, and void in Part, the *Damages* ſhall be ſuppoſed to have been given for that Part only which is good. *Yelv.* 55. *Huys* v. *Wright*, *Stile* 111. *Pragnell* v. *Goff.*

10. Where the Action was againſt an Executor, and the *Jury* found that the Teſtator did promiſe *modo & forma*, but that he died ſuch a Day, which was before the Promiſe ſuppoſed to be made; it was adjudg'd to be *Surpluſage*, and that it would not vitiate. 3 *Cro.* 130. *Inkerſalls* v. *Samms.*

11. In *Aſſumpſit* for Wages and Money lent, on *Non Aſſumpſit*, the Defendant proved ſhe was married, and her Husband alive in *France*; the *Jury* found for the Plaintiff; upon which ſhe moved for a new Trial, alledging the *Verdict* was againſt *Evidence*; but denied; for it ſhall be intended ſhe was divorced; beſides, as the Husband is an Alien Enemy, ſhe ſhall be chargeable as a Feme Sole. *Salk.* 116. *Deerly* v. the Dutcheſs of *Mazarine.*

12. Where the Declaration was for Money received by the Defendant of another, to the Uſe of the Defendant; as this might be for Money lent, which the Defendant receiv'd of the third Perſon to his own Uſe, for which he was to make it good to the Plaintiff, the Court will preſume that after a *Verdict*, and that it appear'd ſo to the *Jury* on the Trial; for where a Declaration will bear two Conſtructions, and one will make it good, and the other bad, the Court after a *Verdict* will take it in the better Senſe. 1 *Mod.* 42. *Noſworthy* v. *Wyldman.*

13. If a Note be brought to the Perſon upon whom it is drawn for Acceptance, and he keeps it, *A.* to whom the Note was payable may produce *T. S.* to whom he had indors'd it with a blank Indorſement, as an Evidence in an Action of Trover againſt the Acceptor. *Salk.* 130.

14. Where an Action is brought by the Indorſee againſt the Indorſor, the Plaintiff need not bring Evidence to prove the Drawer's Hand, but he muſt prove a Demand of the Money of the Drawer, or that he could not find him. 1 *Salk.* 127.

15. A *Bill of Exchange* drawn at *Briſtol* upon one in *London*, it was held that the *Venire* may be in either County. 2 *Salk.* 669.

How far a Verdict will aid an inſufficient Declaration.

1. Where the Plaintiff claim'd a Title to certain Goods in the Cuſtody of *S. P.* and claim'd them to be his own, and intended to remove them; and the Defendant, in Conſideration he would ſuffer them to continue, promiſed to ſee them forth-coming; after a Verdict for the Plaintiff for imbeziling them, the Property of the Goods ſhall be intended to be in the Plaintiff, or otherwiſe the *Jury* would not have found a *Verdict.* 1 *Ven.* 212. *Evans*'s Caſe.

2. Where an Action was brought upon an *Award*, and it was awarded that the Plaintiff ſhould pay the Defendant 10 *l.* and the Defendant ſhould enter into a Bond of 40 *l.* for quiet Enjoyment, after a *Verdict*, the general Averment of Performance of the Award ſhall be ſufficient, though it be a Condition precedent. *Vivian* v. *Shipping*, 3 *Cro.* 385.

3. Where the Declaration was, that the Defendant was indebted to the Plaintiff for Money lent to him, he *ſuper ſe aſſumpſit*; and another Count that *cumq; etiam* that the Plaintiff had found Horſe-meat for *J. S. ſuper ſe aſſumpſit*, yet this after a *Verdict* upon a Writ of Error was held well; becauſe, as it was the Defendant at firſt *Indebitat' fuit, &c. ſuper ſe aſſumpſit*, the ſame Nominative Caſe ſhall be carried by Intendment into the ſecond Promiſe. *Salk.* 663. *Rex* and *Gate-houſe.*

4. Where one of the Promiſes was for Money laid out for the Uſe of the Plaintiff, but does not ſay at his Requeſt, it ſhall be intended after a *Verdict*. 3 *Lev.* 366. *Oliverſon* v. *Wood.*

5. In an *Aſſumpſit* for Medicines, and for Labour, in curing the Defendant's Daughter; after a *Verdict*, a Cure ſhall be intended. 1 *Lev.* 280. *Lee* v. *Edwards.*

6. Where the Action was brought againſt the Executor, upon a Promiſe of the Teſtator, and the Defendant pleaded *Non Aſſumpſit*, but does not ſay, that he, or the Teſtator *Aſſumpſit*, it ſhall be intended, after a *Verdict*, that the Teſtator promiſed. 1 *Lev.* 184. *Brawning* v. *Litton.*

7. Where the Declaration was *pro opere ſuo facto*, without ſaying what, or whether for the Plaintiff; held well after a *Verdict*. 1 *Syd.* 425. *Ruſſel* v. *Collins.*

8. *Aſſumpſit* for Neceſſaries, the Defendant pleads *Nonage*, the Plaintiff replies, that it was for Neceſſaries for the Defendant ſuitable to his Eſtate, and concludes to the Country; held well after a *Verdict*. 1 *Syd.* 341. *Burton* v. *Chapman.*

9. Goods ſold and deliver'd to the Defendant's Father, and does not ſay at the Plaintiff's Requeſt; it ſhall be intended after a *Verdict*. 3 *Keb.* 756. *Kent* v. *Deanbeney*, *Hill* v. *Tilly*, 3 *Keb.* 642.

10. To an Action grounded upon an *Aſſumpſit*, the Defendant may plead the *General Iſſue*, and give the Statute of Gaming in *Evidence*. *Skinner* 195. *Anonymus.*

11. Where an Action is brought on a ſpecial Agreement contained in a Note, and that is the only *Evidence*, the Court denied a Copy to the Defendant. *Hill* v. *Aland*, *Salk.* 215.

12. If it be neceſſary in any Place to alledge a Requeſt at a certain Day, which is done accordingly, the Plaintiff may give in *Evidence* a Requeſt at any other Time, than that which is alledged in the Declaration. 1 *Syd.* 268.

13. In *Aſſumpſit* Evidence was given, that the Debt was attach'd by the Cuſtom of *London*, before the Action brought, and that *Condemnation* had there been before Plea pleaded; and it was argued, that this would defeat the Action; but it was *adjudg'd*, That if an *Attachment* and *Condemnation* be before the Writ ſued out, it may be given in Evidence on *Non Aſſumpſit*, becauſe it is an Alteration of the Property before the Action brought; but as the *Attachment* only was before the Writ purchaſed, it ought to be pleaded in Abatement. 1 *Salk.* 280. *Brook* v. *Smith.*

14. On a *Mutuatus* for 10 *l.* lent, proving 8 *l.* lent is not ſufficient, but on an *Inſimul Computaſſet*, that Part was borrowed at one Time, and Part at another, it is good *Evidence*. *Show.* 215.

15. Upon an *Indebitatus Aſſumpſit*, Matters of Account can't be given in *Evidence*. *Mod. Rep.* 270.

16. In an *Aſſumpſit* for Goods ſold, the Defendant in Mitigation of Damages may give in *Evidence* an Eviction of the Goods. *Vent.* 167.

17. Upon *Non Aſſumpſit*, Infancy may be given in *Evidence*, but not upon *Non eſt factum*. *Ven.* 170.

18. Where there was an *Aſſumpſit* to pay Money on Requeſt, if another did not, on *Non-Aſſumpſit* pleaded, the Plaintiff need not prove a Requeſt. 1 *Lev.* 166.

19. Upon a Promiſe to pay ſo much upon the Marriage of his Daughter, upon *Non Aſſumpſit*, the Defendant can't give in *Evidence* a Diſcharge of the Contract, but in Mitigation of Damages he may. 2 *Lev.* 81.

20. Upon *Non Aſſumpſit* if it were an *Aſſumpſit* in Fact, a Releaſe or Performance cannot be given in *Evidencc*, but in Mitigation of Damages; but in the Caſe of an *Aſſumpſit* in Law, they may be given in *Evidence* before the Action brought. 1 *Syd.* 236, 53. *Beckford* v. *Clarke.*

21. An *Aſſumpſit* by the Husband alone, for Money receiv'd to the Plaintiff's Uſe, the Money was due to the Plaintiff's Wife as Executrix, and paid to the Defendant as due to her, without the Plaintiff's Knowledge. It is no Evidence to maintain the Action; but if it had been paid by the Order of the Plaintiff, it is. *Salk.* 282.

22. Where a Man receives Money by the Appointment of an Adminiſtrator, and the Adminiſtration is repeal'd, an *Indebitatus Aſſumpſit* lies againſt the Perſon that receives it; becauſe as he receiv'd it by the Appointment of a Perſon that had no Power to make ſuch Appointment, it was receiv'd as without an Authority. *Jacob* v. *Allen.* *Salk.* 27.

23. *Evidence*, that the Plaintiff's Wife and the Defendant accounted; and it appear'd that the Defendant had borrowed 8 *l.* at different Times of the Plaintiff's Wife; it was held good Proof of an *Inſimul Computaſſet.* 1 *Show.* 215. *Styart* v. *Rowland.*

24. Where *Non Aſſumpſit infra ſex annos*, before the Time of ſuing out the Original, is pleaded, and the Plaintiff replies, that the Defendant did promiſe within ſix Years before the Suing out the ſaid Original; ſo the ſame on *Plene Adminiſtravit*, where the Date is mention'd on the Record; there you need not ſhew it in *Evidence.* *Edwards* v. *Thompſon.* 1 *Show.* 272.

25. It is ſaid in *Shower* 301. in the Caſe of *Hartup* and *Wardlove*, to have been held by Mr. Juſtice *Jones*, that an *Indebitatus Aſſumpſit* lies not againſt a Man, where he hath receiv'd Money of the Plaintiff, to lay out to a particular Uſe, and he hath laid out Part thereof accordingly, for that then he ought to be called to an Account for the ſame by an Action of Account; but if none were laid out, there an *Indebitatus Aſſumpſit* lies to recover the Money back again; ſo if it were expended to another Purpoſe, for there the ſum is certain, and may be demanded as a Debt. 2 *Show.* 301.

26. Infancy may be given in *Evidence* on *Non Aſſumpſit.* *Salk.* 179. *Darby* v. *Boucher.*

27. The Plaintiff as Executor, brought an *Indebitatus Aſſumpſit*, for Money of the Teſtator receiv'd after his Death to the Plaintiff's Uſe, and produced the Teſtator's Debtor, who paid it as Witneſs; but he was rejected; for by *Holt* Ch. Juſt. The Plaintiff by bringing this Action, determines the Election he had of ſuing the original Debtor, or the Receiver, and allows of the Payment; but if he be non-ſuited, the Matter is at large again, and he may ſue the Debtor; and therefore the Debtor ſwears to diſcharge himſelf, and by Conſequence is no *Witneſs.* 6 *Mod.* 151. *Clerk* v. *Dealy.*

28. 3 *Lev.* 152. *Reſcous* v. *Williams*, Adjudged that a *Witneſs* who had laid a Wager, where the Action was upon Money won at fencing, ſhall be admitted as an *Evidence*, and it ſhall only go to his Credit.

29. Upon *Non Aſſumpſit infra ſex annos* pleaded by the Executor, a Promiſe by the Executor himſelf can't be given in *Evidence* upon that Plea. *Salk.* 28. *Dean* v. *Crane.*

30. By a Demurrer, to *Evidence* all Matters of Fact that may lay in the Knowledge of the *Jury* are confeſs'd; as where in an Inferiour Juriſdiction, an Arreſt was to be produced as *Evidence*, and they proved the Arreſt by Virtue of the King's Writ by a Matter of Fact, which ought

to have been by Matter of Record, for the Writ ought to have been produced to prove itſelf; but as there was a Demurrer to *Evidence*, after a Verdict, it ſhall be intended that the *Jury* knew of the Writ. 1 *Lev.* 87. *Fitzharris* v. *Boiun.*

31. The Defendant pleads *Payment* to one Promiſe, and the *General Iſſue* to another, and the *Jury* find as to both *Non Aſſumpſit.* It appearing that the *Jury* found both Iſſues for the Defendant, that ſhall be taken to be a Miſpriſion of the Aſſociate, and it was order'd to be amended, and the Plaintiff had Judgment. 1 *Cro.* 149. *Reyle* v. *Bagſhaw.*

32. Where the Promiſe was to pay the Value of ſuch Goods as were of *J. S.* and his Partners, and the Defendant pleaded, that the Goods were not *J. S.*'s and his Partners, and Iſſue thereupon, the *Verdict* was found for the Plaintiff. *Finch* for the Defendant moved for a *Repleader*; which by *Twiſden* cannot well be, but rather a *Venire facias de novo*, 1 *Keb.* 289. and afterwards *Twiſden* ſaid, as the *Jury* had found a Matter Impertinent, the Court would not grant a *Repleader.* 1 *Keb.* 291. S. C.

33. What was held an *Erroneous Iſſue. Noy* 114. *Bradley* v. *Denney.*

34. What was held a *Mis-trial* in *Aſſumpſit.* 1 *Brownl.* 7. *Chimera* v. *Cod.*

35. Where *Not guilty* has been held a good Iſſue in *Aſſumpſit.* 1 *Bro.* 8. *Glover* v. *Taylor.*

36. An Attorney in an Action upon the Caſe, may declare for ſo much due for Work and Labour, and give his Soliciting in Evidence. *Skinner* 218. *Ambroſe* v. *Roſe.*

Damages.

1. Wherever the *Damages* upon an *Aſſumpſit* are increaſed by the Court in an *Aſſumpſit*, as well as in any other Action, they muſt be laid to be increaſed *ex aſſenſu partium*, or at the Inſtance of the Plaintiff; and for want of it the Judgment was reverſed. *Palmer* 148. *Couſlade* v. *Ayres.*

2. Where the Jury give *Damages* generally, and Part of the Things ſuppoſed to be found or provided by the Plaintiff for the Defendant, are ſuch as he ought not to have had any Action for; the *Damages* ſhall be ſuppoſed to have been given for that Part, for which an Action would lie. 2 *Roll's Rep.* 79. *Anonymus.* 1 *Leon.* 145. *Anonymus.*

3. If an Action upon the Caſe be brought upon two Promiſes, and both are found for the Plaintiff, the *Jury*, may give *entire Damages* for both; for this is at the Peril of the Plaintiff; for if the Action does not lie for either one of them, the Plaintiff ſhall not have Judgment for the other, but it is not any Inconvenience of the other Part, if the Action lies for both. *Mich.* 14. *Jac. B. R. Payne* and *Selby* adjudged. 1 *Roll's Abr. f.* 570. Letter R. *pl.* 1.

4. Where *General Damages* ſhall be intended for the whole Charge in the Declaration, 10 *Co.* 132. ſo in other Actions upon the Caſe. *Moor* 707. *pl.* 987. *Cro. Eliz.* 560, 866. *Hob.* 189. 10 *Co.* 130. *Moor* 281.—So in Debt. 1 *Brownl.* 70.—So in Treſpaſs. *Stile* 174, 175, 182, 399. 3 *Leon.* 213. *Cro. Car.* 21. *Godb.* 57.—So in Covenant. *Cro. Eliz.* 685. *Cro. Jac.* 439. 1 *Sand.* 155.—And for this, *vid.* 5 *Co.* 108. 10 *Co.* 130, 131. 3 *Bulſt.* 231. *Hetl.* 51, 53. *Lit. Rep.* 61. *Stile* 198. *Cro. Eliz.* 59, 560. *Cro. Jac.* 239. 1 *Syd.* 38. *Moor* 281.—So where the Plaintiff alledges two Breaches of an Award, one of which is ſufficient, and *entire Damages* are given. *Bedel* and *Moor*, 1 *Leon.* 170. adjudged 5 *Co.* 108. cited, *vid. Tel.* 35. where *entire Damages* ſhall hinder Plaintiff's Judgment. *Vid.* 2 *Roll's Abr.* 99. Letter *E.* And the Notes there, 1 *Roll's Rep.* 423. 3 *Bulſt.* 258. S. C. the Judgment being given upon Demurrer, and *entire Damages* aſſeſs'd upon a Writ of Enquiry.

5. In an Action upon the Caſe upon a Promiſe, if the Plaintiff declares, That whereas the Defendant was poſſeſs'd of a Shop in *B.* and of

ſeveral Goods and Chattels in the ſaid Shop, in which Shop the Defendant *adtunc exercuit* the Art or Myſtery of a *Grocer*; the Defendant, in Conſideration the Plaintiff would marry *C.* the Daughter of the Defendant, promiſed to pay ſo much Money for her Portion, and ſo much for Apparel, and that ſhe would transfer, or turn over to the Plaintiff her Trade in *B.* aforeſaid, and the ſaid Shop of the Defendant there, and ſo much of the Goods and Chattels of the Defendant in the ſaid Shop, which ſhould be worth ten Pounds; and that ſhe would not at any Time after exerciſe her ſaid Trade in *B.* aforeſaid, and that ſhe would lend to the Plaintiff ten Pounds, till a certain Time; and the Plaintiff aſſigns a Breach in all, and, among other Things, that ſhe did not turn over to the Plaintiff her ſaid Trade at *B.* nor the Shop aforeſaid; and all found for the Plaintiff, and *entire Damages* given; and though it is impoſſible to aſſign her Trade, yet it ſhall be intended, (if it be void and impoſſible, and ſignifies nothing, and is of no Senſe or Meaning) that the Jury did not give any Damage for it; *Trin. Car. B. R.* between *Goſſe* and *Pragnell*, adjudged in a Writ of Error upon a Judgment *in Banco*, and the Judgment affirmed. *Intratur P.* 24 *Car. Rot.* 217. *Stile* 111. *Allen* 67. 1 *Roll's Abr. f.* 577. *pl.* 5.

6. In an Action upon the Caſe, if the Plaintiff declares, that whereas the Defendant had bargained and ſold 40 Tun of Currans, at the Rate of 46 *s.* 8 *d.* for every hundred Weight to be deliver'd to the Plaintiff, within three Months then next enſuing *diſcomputando ex eodem pretio pro quatuor menſibus*; the Defendant, in Conſideration the Plaintiff had then paid to him in Hand 400 *l.* in Part of Payment, and promiſed to pay the Reſidue to be due, *diſcomputando ut præfertur*, for the Currans, upon the Delivery of the Currans to the Plaintiff; the Defendant *in Conſideratione inde*, promiſed to deliver to the Plaintiff, the Currans within three Months then next enſuing, and aſſigns a Breach for the Non-delivery of the Currans, at the End of three Months according to the Promiſe; and upon *Not guilty* pleaded, a *Verdict* is found for the Plaintiff, and *Damages* aſſeſs'd generally; and tho' it was objected, that it is not known what is intended by the Words in the Bargain to pay 46 *s.* 8 *d.* for every 100 *lb.* *diſcomputando ex pretio pro quatuor Menſibus*; yet altho' the Court does not know what is intended thereby, yet it is well known to the Merchants, and all is to be given in *Damages*; and if it be not of any Senſe, nor is known what is intended thereby, then it ſhall be intended by the Court, that the *Jury* did not give any *Damages* for it. *Mich.* 23 *Car. B. R.* between *Brewer* and *Southwood*. Adjudged *per Curiam*; *Intratur Hill.* 22 *Car. Rot.* 1372. 1 *Roll's Abr.* 577. *pl.* 6.

7. If the Plaintiff declares that he bought of the Defendant *diverſa bona & catalla, viz. unum fulcrum lecti, Anglice*, a Field Bedſtead, with a Teſter and Curtains of Say, *unum Canopium* (*vocat'* a Canopy,) *&c.* and that the Defendant promiſed to deliver *bona præd'* but had not, *&c.* and there is a *Verdict* for the Plaintiff, and *General Damages* given, it ſhall not be preſumed, that any *Damages* were given for the Teſter and Curtains, which were not alledged *poſitive*, but only *expoſitive*; and this Expoſiton is too extenſive, for *fulcrum* ſignifies the Bedſtead only.

Sixthly, **Of the Judgment and Execution.**

1. Judgment may be reverſed *quoad Executionem* only upon an *Elegit. Hob.* 90.

2. Where and in what Caſes a Man may have Judgment without convicting the Defendant of any Wrong. *Hob.* 198, 199.

3. Where Judgment may be reverſed by a Writ of Error, the Party ſhall not be allowed to do it by Plea, but a Stranger to it muſt avoid it by Plea, becauſe he is no Party to the Judgment; as if a *Sci. Fa.* be brought againſt the Bail, it is a good Plea for them to ſay, that the Principal was dead before Judgment given; it is by way of excuſing themſelves to

bring in the Body; but 'tis not good to avoid the Judgment, becauſe it is againſt the Record, which muſt be avoided by Writ of Error. *Cro. Eliz.* 199. 2 *Mod.* 308. *Roll's Abr.* 449, 740.

4. When a Judgment is once executed, the Goods are *in cuſtodia legis*, and ſhall not be taken away by an Exchequer Proceſs, or by the Commiſſioners of Bankrupts. 3 *Mod.* 236.

5. Judgment againſt two, who both died, a *Sci. Fa.* was brought againſt the Adminiſtrator of one of them; and after two *Nichils* return'd, ſhe brought an *Audita Querela*, and Judgment was given, that ſhe ought not to be charged alone. 4 *Mod.* 315.

6. Judgment for the Plaintiff muſt not be ſigned till four Days after the *Poſtea* returned; *alit'* for the Defendant. 5 *Mod.* 205.

7. The antient Manner of Pleading in Arreſt of Judgment, was like other Pleadings formerly, *ore tenus* at the Bar, but was always of ſome Error appearing in the Face of the Record; and if at ſuch Day the Defendant had made Default, then any Body, as *amicus Cur'*, might move in Arreſt of Judgment any Matter, and plead that which the Party himſelf might have pleaded, and for a precedent of a Plea in Arreſt of Judgment, *vide Co. Ent.* 95.

8. Where a Judgment was reverſed, becauſe it appeared, that the Money demanded was not yet payable. 2 *Saund.* 107, 108.

9. In *Aſſumpſit* againſt an Heir to pay Money due on the Bond of his Anceſtor, Judgment was ſtay'd after a Verdict for the Want of an Averment, that the Heir of the Obligor was bound. 2 *Saund.* 135.

10. Where Judgment was arreſted for the Incertainty of a Verdict, in that the Jury found Damages for the Plaintiff, after the Action brought in Covenant. 2 *Saund.* 171.

11. Where the Court will not let a Judgment (neglected) to be entred after a Rule given, without examining into the Cauſe of not entring it. 6 *Mod.* 59.

12. Judgment of a Precedent *Hillary* Term, and the Plaintiff died before Coſts ſettled, and next *Hillary* Term Judgment being entred, as of the firſt *Hillary* Term, was ſet aſide. 6 *Mod.* 191.

13. If a Rule be for a Cauſe to ſtay till the Court be further moved, and the Court is divided, there needs no new Rule from the Court, and the Plaintiff may, without more, enter up his Judgment upon the Verdict; but if the Caſe be ruled to be put in the Paper for Argument, or the laſt Rule be a *Cur' adviſare vult*, and the Court be divided, there can be no Judgment. 6 *Mod.* 203.

14. In *B. R.* after a Rule to ſign Judgment, there muſt be four Days excluſive of the Day on which the Rule was given, and of which the Judgment is ſigned; but in the Common Pleas, they ſtay till the *Quarto Die poſt*, which is but four Days incluſive. 6 *Mod.* 241.

15. Where the Plaintiff ſhall have Judgment for that, for which the Action is well brought, and be barred for the Reſidue, and where not. *Goulds.* 85.

16. If Damages are inſufficiently aſſeſſed, or not aſſeſſed where they ought to be, the Plaintiff by releaſing Damages, ſhall have Judgment for the Reſt. 11 *Co.* 56.

17. If an Action be brought againſt an Infant and another, and both appear by Attorney, the Judgment is erroneous, and ſhall be reverſed as to the Whole. 2 *Cro.* 290.

18. *Indebitatus Aſſumpſit* againſt *A.* and *B.* Judgment by Default againſt *A.* *B.* pleads Payment, and a Verdict for him, this ſhall not diſcharge *A.* *Salk.* 23.

19. If the Defendant moves in Arreſt of Judgment, upon which Judgment is ſtayed ſeveral Terms, and then the Plaintiff dies, the Court may give Judgment, *nunc pro tunc*, as of the firſt Term, at which Term the Plaintiff was alive. 1 *Syd.* 462.

20. If Final Judgment be entred without an Interlocutory Judgment on a Demurrer, it is Error. 2 *Mod. Caſe* 7.

21. In an Inferiour Court on a Demurrer to a Plea, Judgment was entred *pro Cont' eſt*, without *quia videtur Cur'*, and held ill. *Salk.* 402.

See more hereaſter concerning Judgments. V. *the Table.*

There is likewiſe an Action which ſavours of an Aſſumpſit, *and of a* Tort; *as an Action for a Diſceit, and on a Warranty of that which is not ſo as it was warranted; and there being but few Caſes under this Head, I ſhall inſert them only in the following Manner.*

1. An Action on the Caſe in the Nature of Diſceit lies againſt one who cheats another at Cards. *Moor* 776. *Baxter* v. *Woodyear* and *Orbet.* And ſo it does for playing with falſe Dice. 1 *Cro.* 90. *Harris* v. *Bowden.*

2. For an Infant affirming himſelf to be of full Age, *ubi revera* he was under Age, *per quod* he got great Sums of Money on Mortagages; and in this Caſe the Court was moved, That the Defendant ſhould put in ſpecial Bail; but the Motion was not granted. 2 *Syd. Chetwin* v. *Vennor.*

3. After a Verdict for the Plaintiff in an Action on the Caſe for affirming himſelf to be of full Age, *per quod* the Plaintiff lent him great Sums of Money; *ubi revera* he was under Age, and thereby had avoided his Security; after Verdict for the Plaintiff, 'twas moved in Arreſt of Judgment, That no Action lay againſt the Defendant for this; and for this Cauſe Judgment was ſtaid. See 2 *Syd.* 253. *Johnſon* v. *Pye*, *S. C.* 1 *Lev.* 169.

4. No Action lies againſt a married Woman for affirming her ſelf to be Sole, *per quod* the Plaintiff married her, becauſe all Contracts of a Feme Covert are void. 1 *Lev.* 247. *Cooper* v. *Whetham & ux'.*

5. No Action lies for one Tenant in Common againſt the other for a Diſceit concerning the Thing they are Tenants in Common of. 1 *Lev.* 29. *Graves* v. *Sawcer. S. C. Raym.* 15.

6. If any Perſon ſells corrupted Meat, tho' he don't warrant it, yet an Action on the Caſe would lie againſt him; ſo if one ſells bad Cloth, knowing it to be ſo, tho' he don't warrant it, an Action on the Caſe lies; but if the Seller of the Cloth did not know it to be bad, and did not warrant it, then no Action will lie. See *Keilw.* 91.

7. If *A.* has Money delivered to him to be paid to *B.* and *C.* knowing of this, comes to *A.* and affirms himſelf to be *B.* and *A.* pays *C.* the Money, *A.* may have an Action on the Caſe againſt *C.* for this Diſceit. *Moore* 583. *Thomſon* v. *Gardner.*

8. The Plaintiff declared, That her Servant bought 12 Oxen of the Defendant for 80 *l.* for the Plaintiff, and paid the 80 *l.* and the Servant afterwards died; that then the Defendant fraudulently and falſly affirmed to the Plaintiff, that the 80 *l.* was not paid, with an Intent to prevail on the Plaintiff to pay the Money over again, who *fidem adhibens* to the Defendant's Allegations, did pay the 80 *l.* to the Defendant. After Verdict for the Plaintiff, it was moved in Arreſt of Judgment, That no Action on the Caſe lay, but an Action of Account; *per Cur'*, the Plaintiff may have either. *W. Jones* 196. Lady *Cavendiſh* v. *Middleton. S. C.* 3 *Cro.* 141.

9. Action upon the Caſe for Diſceit; whereas *Bernard Wells* was the Plaintiff's Servant *in Com' Derby*, and had 65 *l.* of the Plaintiff's in his Cuſtody, That the Defendant to deceive the Plaintiff of the ſaid 65 *l.* *quandam literam* in the Name of the Plaintiff procured to be written, and directed it to the Plaintiff's ſaid Servant, and counterfeited the Name of the Plaintiff thereto, and ſealed it *quaſi* with the ſaid Plaintiff's Seal, and cauſed it to be deliver'd to the ſaid *Bernard Welles*, affirming it to be Plaintiff's

tiff's Letter, and that he was ſent therewith unto him by the Plaintiff; whereupon he cauſed the ſame to be read, and upon reading thereof, underſtanding *quod in eadem litera continebatur*, that the Plaintiff had appointed the ſaid *Bernard* to pay and deliver to the Defendant the ſaid 65 *l.* to the Uſe of *Thomas Bartlet*, to whom it was ſuppoſed by the ſaid Letter that he was indebted; and affirmed that he was a Servant unto the ſaid *Thomas Bartlet*, and that he was to receive the ſaid 95 *l.* for his Maſter. By Reaſon whereof the ſaid *Bernard* giving Credit unto him, paid and delivered unto him the Money; *ubi revera* the Letter was counterfeited, and he never ſent the Defendant, nor was indebted in any ſuch Sum, *&c.* The Defendant pleads Not guilty, and found againſt him to his Damage of 105 *l.* and it was thereupon moved in Arreſt of Judgment, Firſt, that this Suppoſition *quandam literam ſcribi fecit*, where it ought to be *literas*, for it is not poſſible that one Letter could comprehend what was ſuppoſed to be wrote: Secondly, That this Action lies for the Servant, and not for the Maſter. Thirdly, That it was not ſhewn what was contained in the Letter; for it is only, that the ſaid Servant *intelligebat* what was therein written, and that might be his Miſconſtruction. But all the Court, after ſeveral Motions, held it to be well enough; for the Deceit and Abuſe is to the Maſter, and the Loſs only to him; wherefore the Action well lies for him, altho' it is not ſet down preciſely what was in the Letter; but that *intelligebat* ſuch Matter was contained therein, which is uncertain; yet becauſe the Deceit is alledged to be in the Delivery of the counterfeit Letter, and affirming, that he was Servant of *Thomas Bartlet*, and ſent by the Plaintiff to receive ſuch a Sum as due by him to the ſaid *Thomas Bartlet*, (all which was falſe) all which being a Deceit; upon the whole Matter the Action well lies, and it was adjudged for the Plaintiff; and afterward a Writ of Error being brought thereon, and all theſe Matters aſſigned for Error, the Judgment notwithſtanding was affirmed. 2 *Cro.* 223. *Tracy* v. *Veal*.

10. An Action on the Caſe was brought for ſelling Bills of publick Faith, that were falſe, knowing them to be falſe, with an Intent to deceive the Plaintiff; on a Demurrer to the Declaration, ſeveral Exceptions were taken, but the moſt Material one was, that the Plaintiff ſaid they were aſſigned to him in due Form of Law, but did not expreſly ſhew what that due Form was; but 'twas reſolved by *Rolle* Chief Juſtice, that the Ground of the Action was the Deceit, which was confeſſed by the Demurrer; and that all the other Things were meerly Matter of Circumſtance; and Judgment was given for the Plaintiff. *Stile* 343, 398. *Fowke* v. *Boyle*.

11. In an Action on the Caſe for delivering of a falſe Note of Goods that were exciſable, *per quod* he was forced to pay 50 *l.* After a Verdict for the Plaintiff, on Not guilty pleaded, it was moved in Arreſt of Judgment, 1ſt, That the Act of Parliament that erected the Exciſe was not ſet forth. 2dly, That the Damage was not coupled with the Fraud. 3dly, That it was not ſhewn how he was obliged to pay the 50 *l.* But *per Rolle*, Chief Juſtice, the Fraud is the Ground of the Action, and all theſe Things are but Matter of Circumſtance; in an Action brought for the Recovery of Damages for a Fraud, 'tis no more neceſſary to ſet forth all the Circumſtances, than in an Action grounded on a fraudulent Judgment, it is neceſſary to ſet forth all the Proceſſes therein; ſo the Plaintiff had Judgment. *Stile* 368. *Brighwell* v. *Robſon*.

12. An Action on the Caſe was brought for affirming a Term of Years to be worth 250 *l.* *ubi revera* it was worth but 100 *l.* After Verdict for the Plaintiff it was moved in Arreſt of Judgment, that no Action lay on the bare Affirmance of its Value, there being no Warranty; and of that Opinion was the Court. *Telv.* 20. *Harvey* v. *Young*. But this is to be underſtood of Things of uncertain Value, becauſe ſuch Things may be worth more to one than to another; but if the falſe Affirmation had con-

cerned a Thing of a determined Worth; as if the Defendant had affirmed a Houſe to be let for 50 *l. per Ann.* whereas 'twas let for 20 *l.* the Action would well lie. See 2 *Syd.* 146. *Leakins* v. *Cliſſet. S. C.* 1 *Lev.* 102.

13. Action upon the Caſe, for that the Defendant *falſo & deceptive* ſold unto him ſuch a Day 220 Sheep, affirming that they were his own Sheep; *ubi revera* they were the Sheep of *J. S.* The Defendant pleaded Not guilty, and found againſt him, and it was moved in Arreſt of Judgment, that the Action lay not, becauſe he doth not ſhew that the Defendant had committed any Offence in affirming them to be his; and he doth not ſhew that he had any Damage, or that *J. S.* had retaken them, or ſued him for them; as 24 *Aſſ.* 8. *Sed non allocatur*; for the Sale of Goods which were not his own, but affirming them to be his Goods, knowing them to be a Stranger's, is an Offence, and Cauſe of the Action; and if he ſhould tarry until the Goods were taken from him again, it might peradventure be miſchievous unto him, and he ſhould be without Remedy: Wherefore, *abſente Montagne*, it was adjudged for the Plaintiff. 2 *Cro.* 474. *Furnis* v. *Leiceſter.* See *Show.* 63. *Croſs* v. *Gardiner. S. C.* 4 *Mod.* 261.

14. In an Action on the Caſe, the Plaintiff declared the Defendant ſold him a Gelding, and on the Sale did falſly affirm unto him that the Gelding was his own, and that he bred him of a Colt, whereas he did not breed him, and that he was not the Defendant's, but *J. S.*'s After a Verdict for the Plaintiff, it was moved in Arreſt of Judgment, Firſt, That this Action did not lie, becauſe the Defendant did not warrant the Gelding. Secondly, It was not expreſly charged in the Declaration, that the Defendant knew the Gelding to be another's; but notwithſtanding theſe Exceptions the Court gave Judgment for the Plaintiff. *Stile* 310. *Harding* v. *Freeman.*

15. An Action upon the Caſe in Nature of a Deceit, was brought, and the Plaintiff declared, Whereas upon the ninth of *June*, 25 *El.* Queen *Elizabeth* was ſeiſed in Fee of the Advowſon of the Vicarage of *South-Stoke*, whereunto the Tithes in *S.* appertained; to which Vicarage the Defendant on the 9th of *June*, 35 *Eliz.* affirmed that he was lawful Incumbent, and had Right to the Tithes, from the Death of *Thomas Vaughan* the Incumbent; whereupon the Plaintiff, 16 *June*, 35 *Eliz.* having Communication with the Defendant about his Buying of the Defendant the Tithes appertaining to the ſaid Vicarage after the Death of *Thomas Vaughan* (who died 16 *April*, 35 *Eliz.*) until *Mich.* following; that the Defendant, *adtunc ſciens* that he had not any Right or Intereſt to the Tithes (whereas he was never inſtituted and inducted) but that they appertained to *Evan Thomas*, ſold them to the Plaintiff for 30 *l. falſo & deceptive*; and alledgeth *in facto*, that *Evan Thomas* was preſented, admitted, inſtituted and inducted to that Vicarage, *ult. Aug.* 35 *Eliz.* and took the Tithes, and ſo the Plaintiff loſt them. The Defendant pleads Not guilty, and found againſt him; and it was moved in Arreſt of Judgment, That the Action lieth not; for an Action in Nature of Deceit lieth not, where one ſells a Thing which he has not any Property in; and altho' he in Diſcourſe undertook, that he was Owner, and had a Right to ſell, unleſs he warrants that the other ſhould enjoy it accordingly (which Warranty ought to be at the Time of the Sale) it is not good; but there is not any Warranty nor Affirmance at the Time of the Sale, that he had any Right or Title to ſell; for his Affirmance that he was Vicar, and had a Right to ſell, was upon the ninth of *June*, and the Sale was the 16th of *June* after; and in Proof hereof, relied upon 5 *H.* 7. 41. 9 *H.* 7. 21. and *Chandelor* and *Lopus*'s Caſe, *Paſc.* 1 *Jac.* And of that Opinion were *Tanfield*, Chief Baron, and *Altham*. But if a Man ſells Victuals which is Corrupt, without Warranty, an Action lieth, becauſe it is againſt the Commonwealth; as 9 *H.* 6. 53. 7 *H.* 4. 15. and 11 *Ed.* 4. 6. and altho' the Book of 42 *Aſſ. pl.* 8. was objected, where

one took Goods from another and ſold them, and the owner retook them, that an Action upon the Caſe was brought in Nature of Deceit, for this Falſity in Sale, without any Warranty. *Tanfield* thereunto anſwered, that the ſaid Fact is not adjudged, but the Party admits it, and takes Iſſue; yet if it were allowed to be Law, it is becauſe he there had Poſſeſſion by Tort, and ſo had Colour in Shew to be Owner; and he was deceived by buying of them, who had only gained a tortious Poſſeſſion: And altho' he had not any Right, yet every one took Conuſance of him as Owner, and he himſelf knew that he was not the right Owner; which is the Reaſon that the Action was maintainable: But here he had not any Poſſeſſion; and it is no more than if one ſhould ſell Lands wherein another is in Poſſeſſion, or a Horſe, whereof another is poſſeſſed, without Covenant or Warranty of Enjoyment, it is at the Peril of him who buys; and there is no Reaſon he ſhould have an Action by the Law, where he did not provide for himſelf; wherefore it was adjudged for the Defendant. 2 *Cro.* 196. *Roſwell* v. *Vaughan.*

16. Action upon the Caſe; Whereas 10 *Decemb.* 11 *Jac.* there was Communication betwixt the Plaintiff and Defendant, concerning the Hiring of the Plaintiff to carry for the Defendant, with Horſes and Wain, a Load of Madder, from *Exhall* in the County of *Eſſex*, unto *Uppingham* in the County of *Rutland*; and that then and there, to deceive him in the Carriage thereof, he affirmed fraudulently that the ſaid Load of Madder was but of 800 Pounds Weight; and that he giving Credit to this Affirmation, undertook the Carriage of the ſaid Madder, and that the Defendant promiſed to pay him for every hundred Weight 2 *s.* 8 *d.* and that he giving Credit that the ſaid Madder was 800 Weight, carried it according to the ſaid Agreement, and alledges *in facto* that the ſaid Load of Madder weigh'd much more than 800 Weight, *viz.* 2200 Weight, by Reaſon whereof his Horſes drawing the ſaid Wain, with the Load of Madder, being laden with ſo great Weight, were compelled *ita vehementer laborare & trahere*, that ſeven of his Horſes which drew the ſaid Wain, *ratione inde peribant, per quod, &c.* The Defendant pleaded Not guilty, and found againſt him; and it was now moved in Arreſt of Judgment, that this Action lieth not; for he being hired to carry by the Hundred, it was his own Folly to over-load his Horſes, and it was a Matter which lay in his own View and Conuſance; and if he doubted of the Weight thereof, he might have weighed it, and was not bound to give Credit to another's Allegation; and being his own Negligence he is without Remedy; as where *A.* buys an Horſe, upon warranting him to have both his Eyes, and he had but one, *A.* is remedileſs; for it is a Thing which lies in his own Conuſance, and ſuch Warranty or Affirmation is not material, or to be regarded. But otherwiſe it is in Caſe where the Matter is Secret, and lies properly in the Conuſance of him who warranted it, and cannot be known to him who buys or makes the Contract; for the Law gives no Remedy for voluntary Negligence; and of that Opinion was the whole Court, altho' it was ſaid, that there was apparent Fraud here in him who affirm'd, &c. and peradventure the Plaintiff was a Stranger to the Weight when he undertook the Carriage, and had no Weights to weigh it; but it was anſwered, it was his Negligence, that he would take a Weight ſo far exceeding the Affirmation, without cauſing it to be weighed; wherefore Judgment was ſtaid. 2 *Cro.* 386. *Baily* v. *Merrell. S. C.* 3 *Bulſt.* 94. 1 *Cro.* 793.

17. Action upon the Caſe; whereas *Bud* had brought an Action of Debt in the Common Bench, upon a Bill of 40 *l.* againſt the Plaintiff, and upon Examination, it appeared to the Court, That all beſides 28 *s.* was paid; whereupon they in *Trinity* Term, ordered, That if the Plaintiff would accept of the 28 *s.* with ſuch Damage as the Court ſhould aſſeſs, then the now Plaintiff ſhould imparl until *Octabis Mich.* That the Defendant knowing of this Order, had procured a *Nihil dicit* to be entred, and up-

on this Deceit he brought this Action. And it was thereupon demurred, Firſt, In Regard of the Manner of the Pleading, becauſe he doth not aver, that he tendred the 28 *s.* for otherwiſe the Plaintiff (then Defendant) was not to have the Benefit of the Order. Secondly, This Action lies not in Reſpect of the Matter; for this entring of the *Nihil dicit* is the Fact of the Court, whereupon none can reap Advantage, nor any Action lies for it; and in Proof thereof was cited 26 *Aſſ. Pl.* 46. and 21 *Ed.* 4. 22. where a Writ of Privilege was granted without Cauſe, no Action lies. But all the Court held, that the Action for this Matter would well lie, for procuring a *Nihil dicit* to be entred in Abuſe of the Court, whereby the Party, Defendant in the Action, ſuffered Prejudice. And therefore if one procures another to ſue me without Cauſe, an Action lies not againſt him who ſued without Cauſe; but for this Falſity in procuring my Vexation, an Action well lies. So where one caſts a Protection in delay of my Action; and likewiſe for every Falſity an Action on the Caſe is maintainable; but here this is not good for the Matter, becauſe there is not any Tender, or Refuſal in the other to accept of the 28 *s.* alledged; for without that there is not any Breach of the Order in the now Defendant; and his then procuring of the *Nihil dicit* was lawful; wherefore Judgment was arreſted. 1 *Cro.* 793. *Berren* v. *Bud.*

18. In an Action upon the Caſe, whereas the Defendant being a Goldſmith, and having Skill in Jewels and precious Stones, had a Stone which he affirmed to *Lopus* to be a Bezoar-ſtone, and ſold it unto him for 100 *l.* *ubi revera* it was not a Bezoar-ſtone. The Defendant pleaded Not guilty. After Verdict, and Judgment for the Plaintiff in the King's Bench, Error was thereof brought in the Exchequer-Chamber; becauſe the Declaration contains not Matter ſufficient to charge the Defendant (*viz.*) That he warranted it to be a Bezoar-ſtone, or that he knew that it was not a Bezoar-ſtone; for it may be, he himſelf was ignorant, whether it was a Bezoar-ſtone or not. And all the Juſtices and Barons (beſides *Anderſon*) held, That for this Cauſe it was Error; for the bare Affirmation, that it was a Bezoar-ſtone, without warranting it to be ſo, is no Cauſe of Action; and altho' he knew it not to be a Bezoar-ſtone, it is not material; for every one, in ſelling of his Wares, will affirm that his Wares are good, or the Horſe that he ſells is ſound; yet if he warrants them not to be ſo, it is no Cauſe of Action; and the Warranty ought to be made at the ſame Time of the Sale; as *Fitz. N. B.* 94. *c.* and 98. *b.* 5 *H.* 7. 41. 9 *H.* 6. 53. 12 *H.* 4. 1. 42 *Aſſ.* 8. 7 *H.* 4. 15. Wherefore, foraſmuch as no Warranty is alledged, they held the Declaration to be ill. But *Anderſon*, to the contrary; for the ſelling it for a Bezoar, whereas it was not ſo, is a Cauſe of Action; but notwithſtanding it was adjudged to be no Cauſe, and the Judgment was reverſed. 2 *Cro.* 4. *Chandlor* v. *Lopus.*

19. In an Action on the Caſe, the Plaintiff declared, That the Defendant being poſſeſſed of divers Goods, *viz.* of three counterfeit Jewels, and having Factors in *Barbary*, and knowing that the Plaintiff was beyond the Seas, he acquainted his Factor therewith, and commanded him to conceal the Counterfeiting thereof, and directed him to the Plaintiff, being there; and the Factor came unto the Plaintiff, and intreated him to ſell thoſe Jewels for him, telling him they were good Jewels; whereupon the Plaintiff not knowing that they were counterfeit, ſold the Jewels, being of the Value of 100 *l.* to the King of *Barbary* for 800 *l.* and delivered the Money to the Factor, who delivered it over to his Maſter; that the King of *Barbary* afterwards finding they were counterfeit, committed the Plaintiff to Priſon until he repaid the ſaid King 800 *l.* and that afterwards the Plaintiff requeſted the Defendant to pay back unto him the ſaid 800 *l.* and he refuſed. The Defendant pleaded the General Iſſue; and the Jury upon a ſpecial Verdict, found all this Matter, excepting, that the Defendant had directed his Factor to the Plaintiff, and that the Defendant had commanded his Factor not to diſ-

cover that the Jewels were counterfeit. And it was argued for the Plaintiff, Firſt, That where one is Party to a Fraud, all which followed by Reaſon of that Fraud, ſhall be as done by him; and here the Defendant is the firſt Actor in this Fraud; Firſt, By his knowing they were counterfeit. Secondly, By ſending his Factor, and ſelling them in *Barbary*. And to that Purpoſe were cited *Plowd. Comment.* 473. *Sanders*'s Caſe of the poiſoned Apple; and *Co.* 9. 81. *Gory's* Caſe; and in this Caſe it is a Deceit, altho' there be not any Warranty; as 9 *H.* 6. 53. and 21 *Aſs. pl.* 41. and 42 *Aſs. pl.* 8. 7 *H.* 4. 15. 11 *E.* 4. 6. 5 *E.* 4. 126. and *Co.* 4. 18. 20 *H.* 6. 35. and *Chandler* and *Lopus's* Caſe adjudged in this Court 1 *Jac.* where one ſells a Bezoar-ſtone, *ſciens* that it was counterfeit, and he did not warrant it; yet for that it was *ſciens*, the Paintiff had Judgment. Secondly, he held, That altho' the Jury had not found all the Matter contained in the Declaration; yet becauſe they have found Matter ſufficient, the Plaintiff ſhall recover: And to that Purpoſe were cited *Bridge*'s Caſe, in *Dyer* 75. and Sir *John Sydenham*'s Caſe v. *Man* in this Court, where the Words were, *If Sir* John Sydenham *could have his Will, he would kill*, &c. and the Jury found that he ſpake theſe Words, *I think in my Conſcience if Sir* John, *&c.* And it was adjudged, that altho' the Verdict be different, the Plaintiff could recover, *&c.* So here, *&c.* And it was argued to the contrary for the Defendant, that the Finding in the Verdict is ſo material in Point of Variance, that there remains not Matter ſufficient in the Declaration to maintain the Action. Firſt, They cannot be ſaid to be counterfeit Jewels, becauſe it is confeſſed by the Plaintiff, and ſo found by the Jury, that they were of the Value of 100 *l.* which is a competent Value for good Jewels, and the Value of the Jewel conſiſts in the Eſtimation of him who will buy it; and to that Purpoſe was cited 38 & 39 *Eliz.* in the Common Bench, *Dampat* v. *Symſon*. Secondly, Becauſe there was not in this Caſe any Warranty made to the Plaintiff, that it was a good Jewel; as 11 *Ed.* 4. 6. 7 *H.* 4. and 13 *H.* 4. 1. Thirdly, That the Deceit done unto the Plaintiff is found to be done by his Servant; and the Jury find that the Maſter did not command the Servant to conceal them to be counterfeit; and then by his general Power to ſell the Maſter ſhall not be charged, if the Servant exceed his Power. *Vid.* 9. *H.* 6. 33. and *Doctor* and *Student*, 137. Fourthly, For that the Servant had but a Power given him from his Maſter to ſell, which Power he cannot aſſign over to another. Therefore for theſe material Variances an Action upon the Caſe, being an Action founded upon the Truth of his Caſe, which if it fail, the Action alſo periſheth, he conceived the Action was not maintainable; and to that Opinion the Juſtices inclined, and principally for the third Reaſon. And in *Trin.* 16. *Jac.* it was argued again by *Davenport*, for the Plaintiff, who anſwered to that Objection, That for the Sale by the Servant, the Maſter ought not to be reſponſible; and he ſaid, That as the Fraud in the Maſter was general, and his Direction for the Sale thereof, therefore he ſhall be anſwerable for the Damages that any particular Perſon hath thereby; and compared it to the Caſe of 27 *H.* 8. 22. of a Nuſance in the Highway; and what is done by the Servant, the Maſter ſhall not avoid, appears 9 *H.* 6. 53. and 11 *Ed.* 4. 6. *Long* 5° *Ed.* 4. 17. *Dyer* 238. In this Caſe alſo the Maſter's Receipt of the Money for the Jewels joined with his precedent Command, ſhall charge himſelf; for an Aſſent ſubſequent without any precedent Commands, ſhall charge him as his own Act. 2 *H.* 7. 17. 2 *H.* 4. 18. And as to that Objection, That there is ſuch material Variance betwixt the Verdict and the Declaration, that it deſtroys the Action. He ſaid, That where many Circumſtances are alledged to induce an Action, and ſome Part of them are material, and ſome not, if ſo much be found by the Verdict to maintain the Action, it is good enough; otherwiſe it is in an *Aſſumpſit* upon two Conſiderations; if the Jury find the one, and not the other, there the Action falls, becauſe the *Aſſumpſit* is found upon the

Total Conſideration; as 27 *H.* 8. 24. Sir *Thomas Coventry*, Solicitor General, for the Defendant, and he vouched ſeveral Caſes wherein the Maſter is not charged for the Act of his Servant; as to the Book of 9 *H.* 6. 53. urged againſt him, he ſaid, That *Fitz. N. B. f.* 94. is otherwiſe; which is, That if one ſell certain Pipes of Wine, with Warranty, and they are corrupt, Action upon the Caſe lies; which implies, that it lies not without Warranty, that may be reconciled; for as 11 *E.* 4. 6. is, If a Man ſells corrupt Victuals, an Action upon the Caſe lies without Warranty, becauſe it is prohibited by the Law to ſell corrupt Victuals; but in the ſame caſe of Wine, if it be ſmall Wine, and the Party buys it for ſtrong Wine, no ſuch Action lies. And in this Caſe, altho' the Defendant commanded his Servant to ſell, *&c.* it is to be taken a Sale in a lawful Manner; as 11 *Ed.* 4. and 9 *H.* 6. 51. 13 *H.* 7. 15. The Plaintiff alſo in this Caſe, hath not alledged any legal Damage; for he ought to have alledged, That he was arreſted and impriſoned after the Law of *Barbary*; but if the Impriſonment were tortious, then he hath not any legal Damage; as 38 *H.* 6. is. But here be three material Variances betwixt the Declaration and the Verdict, ſo as there cannot be any Cauſe to maintain this Action, *&c. Dodridge, Juſtice,* If a Goldſmith makes Plate, wherein he mingles Droſs, ſo as it is not according to the Standard, and ſends his Servant to a Fair to ſell it, who ſells it for good Plate, according to the Standard, an Action upon the Caſe lies againſt the Maſter. *Ad quod Mountague* aſſented, becauſe it fails in the Price in Silver. But here it fails but in the Value; for Jewels are ſold for their Valuation. *Note* this Diverſity *Pretii & valoris. Haughton* Juſtice, If one command his Servant to ſell an ill Horſe, and the Servant ſells him for a good one, whereby the Servant is arreſted and indamaged, yet the Servant ſhall not have his Remedy againſt his Maſter. And *Doderidge* cited a Caſe to be adjudged 33 *Eliz.* in the Common Bench; a Clothier of *Glouceſterſhire* ſold very good Cloth; ſo that in *London*, if they ſaw any Cloth of his Mark, they would buy it without Searching thereof; and another, who made ill Cloth, put his Mark upon it without his Privity, and an Action upon the Caſe was brought by him who bought the Cloth, for this Deceit, and adjudged maintainable. But the Court in the principal Caſe inclined in their Opinions againſt the Plaintiff. 2 *Cro.* 468. *Southern* v. *How. S. C.* 2 *Roll.* 5. *S. C. Popham* 26. *S. C. Bridgman* 125. *Note*; By the other Books it don't appear that there was any Judgment given in this Caſe; but *Bridgman* ſays, Judgment was given for the Defendant.

20. Action upon the Caſe, for that the Defendant, 31 *Maii*, 19 *Jac.* had bargained with the Plaintiff to ſell him a Mare; the Defendant *Adtunc & ibidem ſciens* the ſaid Mare to be lame *& variis infirmitatibus deficere*, viz. with Spavins, Splints, *& ad laborandum impotentem, Equam præd' ſanam & abſque ulla infirmitate warrantizavit, & eandem Equam præd'* 31 *Maii*, 19 *Jac. pro* 20 l. *apud London, &c. eidem* Willielmo *falſo & fraudulenter adtunc & ibidem vendidit & ſic dictus def. fallaciter decepit* the Plaintiff in the ſaid Mare, to his Damage, *&c.* The Defendant pleaded Not guilty, and found againſt him; and it was moved in Arreſt of Judgment, that the Declaration was not good; Firſt, Becauſe he doth not ſay, *Warrantizando vendidit*; for otherwiſe it may be, that the Warranty was at one Time, and the Sale at another Time, altho' they were both in one Day, and then the Action is not maintainable. And altho' the Precedents in the Book of Entries, be in this Manner, it was anſwered, That it is *Warrant. vendidit*, which being ſhortly Writ, may be expounded *Warrantizando*, which conjoins it to the Sale; but as it is, it may be otherwiſe intended, and then the Declaration is naught. Secondly, This Declaration is uncertain for want of the Word (*Et*) after the *Warrantizavit*; for as it is, it is inſenſible. And of that Opinion were *Doderidge* and *Chamberlain.* But *Lea*, Chief Juſtice, did not deliver any Opinion; wherefore

fore the Defendant appearing, the Plaintiff declared *de novo*. 2 *Cro.* 630. Sir *William Pope* v. *Lewyns*.

21. In an Action upon the Caſe was brought in Nature of a Deceit, that the Defendant had ſold to the Plaintiff certain Sheep, and had warranted them to be ſound, when in Truth they were rotten. The Defendant pleads, That they were ſound at the Time of the Sale, *Et de hoc ponit ſe ſuper patriam.* The Plaintiff demurs, and it was adjudged for him, becauſe the Defendant had taken a Traverſe to the Cauſe of Action, *viz. abſque hoc*, that they were rotten; and Iſſue ſhall not be taken upon two Affirmatives. 4 *H.* 7. 13. *a.* 1 *H.* 7. 9. *b. c.* *Noy* 124. *Reedhead* v. *Harper. S. C. Telv.* 124.

22. In an Action on the Caſe the Plaintiff declared, That the Defendant ſold him Tithes for ſo much Money, *ſciens* that he had no lawful Title to them. After a Verdict for the Plaintiff, it was moved in Arreſt of Judgment, that the Declaration did not expreſly charge that the Defendant had no Title; yet the Plaintiff had Judgment. *Moor* 467.

23. In an Action on the Caſe, the Plaintiff declared, That the Defendant ſold him two Oxen, and warranted them, &c. The Jury on *Non culp'* pleaded, found that the Defendant ſold one Ox; and twas alledged that this did not maintain the Declaration, becauſe the Contract, which is ſuppoſed to be join'd to the Warranty, is variant from what the Jury found; but the Court gave Judgment for the Plaintiff, becauſe the Action is grounded on the Deceit, and not on the Warranty. 1 *Cro.* 884. *Gravenor* v. *Meere*.

24. In an Action on the Caſe for a Deceit, the Plaintiff ſet forth, That he bought ſeveral Parcels of Silk for —— Silk, whereas it was another kind of Silk; and that the Defendant knowing this Deceit, ſold it him for —— Silk. On the Trial, upon Not guilty, it appeared that there was no actual Deceit in the Defendant, who was the Merchant, but that it was his Factor beyond Sea; and the Doubt was, If this Deceit could charge the Merchant? And *Holt*, Chief Juſtice, was of Opinion, that the Merchant was anſwerable for the Deceit of his Factor, tho' not *criminaliter*, yet *civiliter*; for ſeeing ſome Body muſt be a Loſer by this Deceit, it is more Reaſon that he that imploys and puts a Truſt and Confidence in the Deceiver, ſhould be a Loſer, than a Stranger: And upon this Opinion the Plaintiff had a Verdict. 1 *Salk.* 289. *Hern* v. *Nicholas*.

In this Action for Trover and Converſion, the Caſes in the Books are diſtributed under the following Heads.

First, **In what Inſtances it hath been held that this Action may be brought.**

Secondly, **By whom.**

Thirdly, **Againſt whom this Action may be brought.**

Fourthly, **Of the Declaration.**

Fifthly, **Of the Plea.**

Sixthly, **Of the Trial, Verdict and Evidence.**

Laſtly, **Of the Judgment and Execution, and the Conſequence of ſuch Judgment.**

First, In what Inſtances it hath been held that this Action may be brought.

1. The Trover is but an Inducement to the Wrong complained of, and 'tis the Converſion only that is material; as where an Action upon the Caſe was brought upon a Trover and Converſion of twenty Barrels of

Butter, and declared, That by negligently keeping of them, they were become of little Value; upon which there was a Demurrer in Law, and by the Opinion of the whole Court upon this Matter no Action lieth; for a Man who comes to Goods by Trover, is not bound to keep them ſo ſafely, as he who comes to them by Bailment. *Walmeſley*: If a Man finds my Garments, and ſuffereth them to be eaten with Moths by the negligent Keeping of them, no Action lieth: But if he weareth my Garments, it is otherwiſe; for the Wearing is a Converſion. 1 *Leon.* 224. *Waldgrave* v. *Ogden*, reported in 1 *Cro.* 229. by the Name of *Mulgrave* v. *Ogden*.

2. If a Man takes my Horſe and rides him, and after redelivers him to me, yet I may have this Action againſt him; for this is a Converſion, and the Redelivery is no Bar of the Action, but ſhall be only in Mitigation of Damages. *Trin.* 38 *El. B. R. per Curiam*, in the Counteſs of *Rutland*'s Caſe. 1 *Roll's Abr.* 5. Letter *L. pl.* 1. 1 *Leon.* 223. *Gouldsb.* 155. *Stile* 261. 1 *Bulſtr.* 38.

3. If a Man finding Goods, and knows them to be mine, and he refuſes and denies to deliver them to me, this a Converſion in Law, *Mich.* 38, 39 *El. R. R.* between *Eaſton* and *Newman*, *per Cur'*; which *intratur Hil.* 37 *El. B. R. Rot.* 460. for the Denial makes him a Treſpaſſer *ab initio*; for this ſhews his Intention to have been ſo *ab initio*. 1 *Roll's Abr.* Letter *L. pl.* 2.

4. But it was held, 2 *Bulſt.* 312. That if a Man has my Horſe, and I demand it, and he refuſes to deliver it, telling me he does not know whether I am the right Owner or no, 'tis no Converſion. *Moor* 460, 843. 1 *Roll's Rep.* 131. *V.* 2 *Roll's Abr.* 561. *pl.* 6.

5. If a Man delivers Goods or Money to another, and after upon my Demand he refuſes to reſtore them; yet this is no Converſion, but only Evidence of a Converſion, in as much as he came to them by my own Delivery. *Hill.* 12 *Jac. B. R.* between *Iſaac* and *Clerk*, *Moor* 841.

6. If I deliver Goods to a common Carrier to carry to a certain Place, and after the Goods are ſtole from the Carrier, this is no Converſion in the Carrier, ſo as to charge him in a Trover and Converſion; but an Action upon the Caſe lies againſt him, as a Carrier upon the Cuſtom of the Realm to carry Goods ſafely, and them to deliver as he is appointed. *Mich.* 14 *Car. B. R.* between *George* and *Wilburn*, *per Curiam*, in Arreſt of Judgment. 1 *Roll's Abr. f.* 6. *pl.* 1.

7. If one delivers Goods to another to be kept ſafely, whether for Hire or not, and the Party undertakes to do it; if by his Default they are damnified, Caſe or Detinue will lie; but if the Party bring Detinue, he ſhall recover the Goods in ſuch Plight and Condition as they are in, and it ſhall be adjudged the Folly of the Plaintiff to bring an Action which is no adequate Remedy, when he might have had one that was; but if the Party ſell the Goods, then the Bailor ſhall have an Action of Detinue, not one of Trover, according to the Opinion of ſome; but according to the Opinion of others, (and ſo the Law is now underſtood) the Party hath his Election, and may bring either; for the ſelling the Goods is a Miſdemeanor, which is ever a good Cauſe to bring an Action on the Caſe. See *Keil.* 160. See 4 *Leon.* 189.

8. An Action of Trover and Converſion of 100 Musk-Cats, and 60 Monkies; the Defendant pleads Not guilty, and found againſt him: And it was moved in Arreſt of Judgment, that an Action lay not, becauſe he doth not ſhew, that they were tame or reclaimed; as 12 *H.* 8. and 14 *Eliz. Dyer*, for a Hawk; *ſed non allocatur*; for they be Merchandize, and valuable; and ſo it is of an Action for a Parrat. Wherefore it was adjudged for the Plaintiff. 2 *Cro.* 262. *Grymes* v. *Shack.*

9. An Action of Trover was brought for ſeveral Things, and among the reſt *de uno Æthiope, vocat.* a Negro; and on Not guilty pleaded, Verdict was for the Plaintiff, and ſeveral Damages, and as to the Negro it was moved in Arreſt of Judgment, that the Action would not lie, for that the Owner had not an abſolute Property in him; he could not kill him as he

could an Ox. And it was ſaid that Property implies the Right of having and enjoying, and diſpoſing; but it does not always imply a Power to deſtroy; tho' this Power holds in Beaſts, Fowl and Fiſh, which were made the Property of Mankind by the Act of God, and have a natural Exiſtence; yet in Things incorporeal, which conſiſts *in Jure tantum*; it being a Property *ex inſtituto* only, the Owner has only a Power according to the Meaſure of his inſtituted Right: And it was inſtanced in the Caſe of a Common, a Way and a Ward. On a *Ca. Sa.* the Plaintiff has an Intereſt in the Body of the Priſoner as a Pledge, not to ſell, but to keep, and it goes to Executors. *Hob.* 61. In a Servant, to work him; in a Captive, to ſell him. *Reg.* 102. *F. N. B.* 18. *a. B. N. C.* 295. *Bro. Property*, 38. 1 *H.* 6. *ch.* 5. in *Raſt.* 219. *Cot. Ab.* 460. That the Writ *de Nativo habendo* muſt lay the Explees of a Villein in working and taxing him at Will. *Co. Ent.* 406. That by the Law of *Moſes* a Man may be a Slave; and a Slave was a Chattel, his Maſter's Money, *Exod.* xx. 21. That by the ſame Reaſon there may be a *Servus prædialis*, *i. e.* a Villein; one may be a *Servus perſonalis*, and that firſt a Captive, and afterwards a Villein. *Hob.* 27. *Brownl.* 78. A Vellein in Groſs is a Chattel, for he is of a periſhable Nature, and cannot endure for ever. So is *Fitz. Diſcontinuance*, 16. *Br. Villein*, 60. As Villeins are regardant to Land, it is a different Thing; and in that Reſpect they are Inheritances, and ſo are the Charters. Every Villein is intended in Law regardant; the Writ in the Regiſter therefore ſuppoſes him to be *Nativum ſuum*, but before he was a Villein, he was a Captive, and then a Chattel: Laſtly it was inſiſted, That the Court ought to take Notice that they were Merchandize, and cited, 2 *Cro.* 262. The Caſe of Monkies. 2 *Lev.* 201. 3 *Keb.* 785. *Inſt.* 112. If I impriſon my Negro, a *Habeas Corpus* will not lie to deliver him; for by *Magna Charta* he muſt be *liber homo*. 2 *Inſt.* 45. *Sed Curia contra*; Men may be the Owners, and therefore cannot be the Subject of Property. Villeinage aroſe from Captivity, and a Man may have Treſpaſs, *quare captivum ſuum cepit*, but cannot have Trover *de Gallico ſuo*; and the Court ſeemed to think that, in Treſpaſs *quare captivum ſuum cepit*, the Plaintiff might give in Evidence, that the Party was his Negro, and he bought him. 2 *Salk.* 666. *Smith* v. *Gould.* See 2 *Lev.* 201. *Butts* v. *Penny.* 3 *Lev.* 337. *Chambers* v. *Warkhouſe.*

10. To an Action of Trover and Converſion of 25 *l.* the Defendant pleaded Not guilty; and the Jury found a Special Verdict, That the Defendant being Servant and Factor to the Plaintiff, ſold twenty Quarters of his Maſter's Corn for 25 *l.* and receiving it, converted it to his own Uſe. *Stephens* moved for the Defendant, that this Verdict is found for him; for this 25 *l.* was never in his Maſter's Poſſeſſion, nor his Money, and this Action lay not, but rather an Account. This alſo is Money out of any Bag; wherefore, &c. But *Fenner* held, that 'tis found for the Plaintiff; for the Poſſeſſion of the Servant is the Maſter's Poſſeſſion, and it is as if he always had it in his Poſſeſſion. And it hath been adjudged, that the Servant being robbed, the Maſter may well bring the Action; and that was the Lord *Rich*'s Caſe. *Clinch* doubted. Afterwards this Caſe being moved again, the Plaintiff had Judgment, but that Judgment on a Writ of Error, was reverſed; becauſe Money being a thing that cannot be known, the Property was in the Servant, and it appears by the Writ that the Property of the Money is in the Receiver; ſo 'tis in Caſe of Bailment of Things that are undiſtinguiſhable, the Property of them is in the Bailee. 1 *Cro.* 638, 661, 746. *Holyday* v. *Hicks.*

11. In an Action upon the Caſe *ſur* Trover and Converſion, grounded upon a Deceit, the Caſe appeared to be this; that where there was *A. B.* and *C. A.* was indebted to *C.* in ſuch a Sum of Money, and *B.* in ſuch a Sum of Money was indebted to *A.* It was agreed between *A. B.* and *C.* that *B.* in Diſcharge of his Debt unto *A.* ſhould diſcharge the Debt of *A.* unto *C.* in paying and delivering unto him

certain Commodities, which he had in his Hands and Poſſeſſion, being properly the Goods and Commodities of *A.* and which *B.* by and with Conſent of *A.* did aſſume, promiſe, and undertake to deliver unto *C.* in Diſcharge of the Debt of *A.* unto him, and *C.* was contented to accept thereof. According to this Agreement made between them, *B.* did not according to his Promiſe or Undertaking, diſcharge the Debt of *A.* unto *C.* by Delivery of the Goods unto him, but contrariwiſe did convert them unto his own Uſe, after the Death of *A.* and for this *C.* brought his Action on the Caſe for a Trover and Converſion grounded upon this Deceit; and whether this lieth or not, is the Queſtion. *Curia.* The whole Court agreed clearly in this, that the Action is well maintainable; for if a Man bail Goods to one, to bail them over to another, if he to whom this Bailment was thus made to bail them over, contrary to the Truſt in him repoſed, doth not deliver them over, as he was to have done, but doth convert them to his own Uſe, he has by this his Deceit, made himſelf liable to an Action, both of the firſt Bailor, and alſo of the Party to whom they were to have been bailed over, and either of them may well have his Action againſt him for this. And notwithſtanding the third Perſon here, to whom the Goods ought to have been bailed, had never the Poſſeſſion of them; yet this Converſion and Non-feaſance of that which he ought to have done, is a Wrong, and very prejudicial to *C.* the third Perſon. And for this Wrong, and Prejudice, he may have his Action on the Caſe, as well as the firſt Bailor. But both of them ſhall not have their Actions; but he that firſt begins his Action, ſhall go on with the ſame. *Curia.* The whole Court alſo agreed clearly in this, That this not bailing over, and Delivery of the Goods by *B.* the firſt Bailee, unto *C.* in Satisfaction of the Debt of *A.* and according to the Agreement made between *A.* and *B.* that this doth clearly in Law amount to make a Converſion; and that by this he has made himſelf ſubject and liable to an Action to be brought by the Party to whom he ſhould have delivered them. *Williams*, Juſtice, If a Man delivers a Deed to one, to deliver the ſame over to another, and he doth not deliver the ſame over accordingly, the Party to whom the Deed was to have been delivered, may well have his Action for this not Delivery of the Deed unto him; and with this agrees the Caſe in 28 *H.* 8. *Dyer fol.* 20, 21. *pl.* 125, 228. in the Grocers Caſe of *London*: By *Mountague* there; If a Man delivers Money to bail this over, if the Bailee doth not perform the Condition, he is by this a Debtor for the Money, or accountable at the Pleaſure of the Bailor. And there *pl.* 128. in every Receipt two Things are included; *viz.* either the Receipt is to the Uſe of the Bailor, or to the Uſe of a Stranger, or to his own Uſe; if the ſame be to the Uſe of a Stranger, then he is his Debtor; becauſe that the Property is not in the Bailee. *Curia.* The whole Court agreed in this, That the Action brought by the Plaintiff againſt the Defendant, being the firſt Bailee, for not bailing of the Goods according to the Agreement, was well brought, and that here was a good Converſion in Law; and ſo by the Rule of Court, Judgment was given for the Plaintiff. 1 *Bulſt.* 68. *Flewellin* and others againſt *Rave.*

12. In Trover of ten Angels, and converting of them, the Defendant pleads, That there was a Wager betwixt the Plaintiff and one *Currance*, concerning the Quantity of Yards of Velvet in a Cloak: And the Plaintiff and the ſaid *Currance*, each of them delivered into his Hands ten Angels, and each of them agreed, That if there were ten Yards of Velvet in a Cloak, that then they ſhould be delivered to the ſaid *Currance*, and if not, to the Plaintiff; and alledgeth, *in facto*, that upon meaſuring of the Cloak, it was found, that there were ten Yards of Velvet therein: Whereupon he delivered them to the ſaid *Currance*, which is the ſame Converſion, &c. And it was thereupon demurred and agreed, firſt, That an Action of Trover lies for Money out of a Bag or Cheſt. But for the Plea, *Gawdy* held it to be good enough; for the Meaſuring thereof is the

fitteſt way for trying it; and when it is ſo found by the Meaſuring, he hath good Cauſe to deliver them out of his Hands to him who had won the Wager. But *Fenner* and *Popham* held, That the Plea was not good: For it may be that the Meaſuring was falſe, and therefore he ought to have averred *in facto*, That there were ten Yards, and that it was ſo found upon the Meaſuring thereof. And he might well have pleaded the general Iſſue, and given all the Matter in Evidence, for it is but Evidence: And when he delivered it according to the Intent of the Bargain, it is not any Converſion. Wherefore by the Conſent of *Gawdy*, (*abſente Clinch*) it was ruled, That Judgment ſhould be entered for the Plaintiff, unleſs other Matter were ſhewn, &c. *Cro.* 870. *Ledeſham* v. *Labram.* See 1 *Cro.* 841.

13. Trover for Million Lottery-Tickets; upon Evidence it appeared, That the Plaintiff had given the Tickets in Queſtion to a Goldſmith to receive the Money due on them; that ſome Payments were due, and ſome were not; and this Goldſmith had received Tickets of the Defendant, and given him a Note to pay him ſo many Million Lottery-Tickets; that the Plaintiff's Tickets were delivered to the Defendant by the Goldſmith upon this Note. It was inſiſted on, that this Note under the Goldſmith's Hands, could be no Evidence againſt the Plaintiff; but it was read, and *Holt*, Chief Juſtice, ſaid, That the Way and Manner of trading is to be taken Notice of, and the beſt Proof that the Nature of the Thing will afford, is only required: When Goldſmiths give their Notes, no Witneſſes are by; and their Notes to pay Money or Tickets are Evidence of the Receipt of Money. If Money is ſtolen and paid to another, the Owner of the Money can have no Remedy againſt him that received it; but if Bank-Notes, Exchequer-Notes, or Million-Tickets, or the like, are ſtolen or loſt, the Owner hath ſuch an Intereſt or Property in them, as to bring an Action into whatſoever Hands they are come: Money or Caſh is not to be diſtinguiſhed, but theſe Notes or Bills are diſtinguiſhable, and cannot be reckoned as Caſh, and they have diſtinct Marks and Numbers on them: He agreed in this Caſe, That if the Exchequer, or any private Perſon had paid to the Goldſmith the Money or the Tickets, it would have been a good Payment againſt the Owner; but whether it would be ſo where Tickets not due are bought for a valuable Conſideration, he doubted; but as the Caſe was, the Goldſmith having Tickets of the Plaintiff and of the Defendant, the Delivery of the Plaintiff's Tickets to the Defendant, was no Change of the Property, or any Conſideration; for tho' the Owner gave the Goldſmith Power to receive Money for the Tickets, he did not give him Power to change them for other Tickets; and accordingly a Verdict was given for the Plaintiff. 1 *Salk.* 283. *Ford* v. *Hopkins.*

14. The Widow of a Waterman, who, as was ſaid, by the Uſage of Waterman's Hall may take an Apprentice, had her Apprentice taken from her, and put on Board a Queen's Ship, where he earned two Tickets, which came to the Defendant's Hands, and for which the Miſtreſs brought Trover: And it was agreed, the Action would well lie, if the Apprentice was a legal Apprentice; for his Poſſeſſion would be that of his Maſter, and whatſoever he earns ſhall go to his Maſter. But it was objected, 1. That the Company of Watermen is a voluntary Society, and that being free of it, doth not make a Man free of *London*: So that the Cuſtoms of *London*, for Perſons under one and twenty to bind themſelves Apprentices, doth not extend to Watermen; which was agreed by all. Then it was ſaid the ſuppoſed Apprentice here was no legal Apprentice; if the Indentures be not enrolled purſuant to the Act of Parliament of 5 *Eliz.* and if he were not a legal Apprentice, the Plaintiff had no Title. But *Holt*, Chief Juſtice, ſaid, he would underſtand an Apprentice, or Servant, *de facto*, and that would ſuffice againſt them being Wrong-doers. *M. Caſes* 69. *Barber* v. *Dennis.*

15. In an Action of Trover and Converſion of five Oxen, the Defendant pleaded Not guilty, and by ſpecial Verdict it was found, That one *J. S.* as Bailiff to the Defendant, took thoſe Beaſts as for Heriots due to the Defendant, where there were not any due, and without any Command from the ſaid Defendant the Viſcounteſs *Montague*: But that afterwards ſhe agreed thereto, and converted them; and after that the Bailiff died. And, whether this Action lies, or that he ſhould have brought a general Action of Treſpaſs was the Queſtion? And *Walmſley* and *Kingſmill* held, That this Action lies not; for when the Bailiff took them tortiouſly, the Property is diveſted out of the Plaintiff, and the Poſſeſſion: So that he cannot ſuppoſe that he was poſſeſſed of them, until he loſt them, and until they came to the Defendant's Hands. And the Defendant by aſſenting to the Taking is a Treſpaſſer *ab initio*; as 28 *Aſſ.* 9. 28 *E.* 3. 18 & 40 *E.* 3. 20. are: Wherefore, where he might have had a general Writ of Treſpaſs, he cannot have any other Manner of Action; eſpecially not this Action, which differs from it in Nature and Quality: But *Anderſon* and *Warburton*, *contra.* They agreed, That An Aſſent before or after the Taking of the Goods made her a Treſpaſſer *ab initio*, and to be puniſhed as a Treſpaſſer. But not an Aſſent after to a Battery formerly done; or to that which is a Tort, and puniſhable by the Statute-Law, as an Aſſent to a Riot, or forcible Entry after it is done, ſhall not make him puniſhable. But although Treſpaſs lies; yet he may have this Action if he will; for he hath his Election to bring either. And as he may have Detinue or Replevin for Goods taken by a Treſpaſs, which affirms always Property in him, at his Election; ſo he may have this Action; for one may qualifie a Tort, but not increaſe a Tort. So he hath an Election to make it a tortious Taking or not; which is the Reaſon that if Goods be taken by a Treſpaſſer, yet if the Party for whom they were taken, be attainted of Felony, he ſhall forfeit them; or the Right and Property remains in him, and the Law ſhall adjudge them in him, until he makes his Election to the contrary, by bringing a Writ of Treſpaſs; wherefore he might maintain the one Writ or the other at his Election. Wherefore, &c. 1 *Cro.* 824. *Biſhop* v. Viſcounteſs of *Montague*. See *Show.* 81. *Parker* v. *Gage*; and *Winch*, 46, 47.

16. An Action of Trover and Converſion was brought, and upon the whole Matter the Caſe appeared to be this:

A Stranger took the Horſe of the Plaintiff, and ſent him to a common Inn, and there he remained for the Space of Half a Year, at which Time the Plaintiff had Notice where his Horſe was, and thereupon demanded him of the Inkeeper, who anſwered, That a Perſon unknown left the Horſe with him, and ſaid, he would not deliver the Horſe to the Plaintiff unleſs he would pay him for his Meat which came to three Pounds ten Shillings for all the Time, and alſo would be ſure that it was his Horſe; upon which the Plaintiff demurred in Law.

And it was reſolved by *Montague*, Chief Juſtice, *Croke* and *Doderidge*, Juſtices; (*Haughton* Juſtice diſſenting) That the Defendant's Plea was good; for the Innkeeper was compellable to keep the Horſe, and not bound, at his Peril, to take Notice of the Owner of the Horſe; and by the Cuſtom of *London*, if a Horſe be brought to a common Inn, where he has (as it is commonly ſaid) eaten out his Head, it is lawful for the Innkeeper to ſell him; which Caſe of the Cuſtom implies this Caſe. And there is a Difference, where the Law compels a Man to do a Thing, and where not; as if the Lieutenant of the Tower brings an Action of Debt for Diet againſt one who was his Priſoner: In this Caſe the Defendant cannot wage his Law; becauſe the Law compels the Lieutenant to give Victuals to his Priſoner; otherwiſe if another Man brings an Action of Debt for Diet: And in this Caſe at the Bar the Innkeeper was compellable. And *Doderidge* ſaid, That if the Law was as the Plaintiff would have it, it would be a pretty Trick for one who wants a keeping for his

Horſe. And *Mich.* 6 *Jac.* in the King's Bench, between *Harlow* and *Ward*, the like was reſolved, as was cited by *Barkeſdel*, of Counſel with the Defendant. *Popham* 127. *Robinſon* v. *Walter*, *S. C* 3 *Bulſt.* 268. *S. C.* 1 *Roll's Rep.* 449. *S. P.* 3 *Bulſt.* 289. *Stirt* v. *Drungold*, *S. P.* 1 *Bulſt.* 170. *Skipwith* v.———

17. An Action of Trover may be brought for Goods taken for the King's Tax; if the Taking were any ways unlawful; as if the Party were exempt from the Taxes, and the like. 2 *Mod.* 182. *Bell.* v. *Knight.*

18. Trover lies to try the Validity of the Judgment of the Commiſſioners of the Exciſe, if for Things over which they have no Power; otherwiſe as it ſeems in Things within their Juriſdiction, and the proper Remedy in ſuch Caſe is an Appeal. See *Hardreſs's Reports*, 578, and 480.

19. Trover for ſix Hogs, ſpecial Verdict was found, *viz.* That the Lands demiſed, lying in two Counties, *viz.* Part in the Hundred of *A.* in *Wilts*, and Part in the Hundred of *B.* in *Southampton*; the Leſſor for Rent-Arrear diſtrained in both Hundreds, and the Diſtreſs being not replevied in five Days, Notice was given to the Owner of the Goods, and then he ſent for the Conſtable of *A.* who, in the Preſence of *B.* ſold them in the Hundred of *B. Et per Cur.* Firſt, Perſonal Notice is ſufficient; for Notice is the Thing required. 2dly, Notice to the Owner is ſufficient againſt him in Trover; but if the Tenant had brought Replevin, that would not have ſerved as to him, but he muſt have had Notice alſo. 3dly, Tho' the Act requires the Oath ſhould be adminiſtred by the Conſtable of the Hundred where the Goods are, and here the Conſtable of *A.* adminiſtred the Oath in the Hundred of *B.* where he had no Authority, yet this was held good; becauſe the Defendant could not ſever the Diſtreſs, it being intire as the Cauſe was, and the Hundreds contiguous; ſo that the driving was lawful, and a Continuance of the firſt Taking. *Sed per Cur.* A Diſtreſs in *Middleſex* ought not to be driven into a diſtant County, as *Hampſhire.* 1 *Salk.* 247. *Walter* v. *Rumball*, *S. C.* 4 *Mod.* 390.

20. Trover for a Ship, and its Tackle and Furniture. Upon Not guilty pleaded, a ſpecial Verdict was, That one *William Gault*, a Denizen of *England*, was Owner of the Ship at the Time of the Taking, and was *Dutch*-built, and taken in the War between the *Dutch* and *French* as a *Dutch* Prize, and condemn'd for Prize in the Court of Admiralty of *France*, and ſold; and that when the ſaid Ship was taken as Prize, there was Amity between *England* and *France.* That the Maſter was a *Dutchman* born, but a Denizen of *England.* The Mate was *Engliſh*, and eight Mariners, and two *Dutch* on Board; that the ſaid Ship was ſold to divers Perſons by Virtue of the Sentence of the Admiralty of *France*, and that the Plaintiff bought the ſaid Ship from the Perſons to whom the ſame was ſold as aforeſaid; that the Defendants, as Servants of the ſaid *William Gault*, took the ſaid Ship from the Plaintiff; and if the Defendants be guilty, *&c.*

The chief Queſtion intended was, whether this Sentence ſhall be examined by the Common Law? And reſolved, it ſhall not; becauſe though it be in another King's Dominions, we ought to give Credit to it, or elſe they will not give Credit to the Sentences of our Courts of Admiralty, and the Defendants are not Prejudic'd; for the Way is, if they find themſelves aggrieved, to petition the King, who will examine the Caſe; and if he finds Cauſe of Complaint, will ſend to his Ambaſſador reſiding with the Prince or State where the Sentence was given, and upon Failure of Redreſs, will grant Letters of Mart and Repriſal; and Judgment was given for the Plaintiff. *Raym.* 473. *Hughes* v. *Cornelius & al'.*

21. In Trover for Goods, on the twenty-fifth of *November*, *anno tertio Caroli:* Upon Not guilty, a ſpecial Verdict was found, That one *John Hill* and *Alice Squire* were poſſeſſed of thoſe Goods, and uſed the Trade of Merchandize, and being ſo poſſeſſed, were bound to the Defendant, *anno viceſimo primo Jacobi*, in a Statute, acknowledged according to the

Statute of *viceſimo tertio Henrici octavi*, *capite ſexto*, for a true and juſt Debt; and that being forfeited, he ſued an Extent upon that Statute, *viceſimo Octobris tertio Caroli*, directed to the Sheriffs of *London*, and that they, by Virtue of that Extent *viceſimo primo Octobris tertio Caroli*, extended thoſe Goods, (the Writ being returnable *in Craſtino Animarum*) and returned the Writ and Inquiſition into the Chancery, that the third of *November*, 3 *Car.* the ſaid *John Hill* and *Alice Squire* became Bankrupts, being indebted to the Plaintiff, and to divers others, for true and juſt Debts. That upon the ſixth Day of *November*, 3 *Car.* the Defendant ſued a *Liberate* upon that Extent, and thoſe Goods the ſame Day were delivered by the Sheriffs according to the Appraiſement in the Extent; That afterwards, *viz.* upon the eighth Day of *November*, the Plaintiff, and others, ſued out the Commiſſion of Bankrupts againſt the ſaid *Hill* and *Squire*, and the Commiſſioners, by Virtue of their Commiſſion, ſold thoſe Goods to the Plaintiff upon the three and twentieth Day of *November*, 3 *Car.* and that the Defendant afterwards, *viz.* the twenty-fifth Day of *November*, the ſame Year, converted them, *&c. Et ſi ſuper totam*, *&c.* And it was argued ſeveral Days at the Bar, and the ſole Queſtion was, Whether *John Hill* and *Alice Squire* becoming Bankrupts after the Extent, and before the *Liberate*, the Sale of the Commiſſioners unto the Plaintiff, after the Goods delivered upon the *Liberate*, be good? And it was argued by *Noy* and *Farrer* for the Plaintiff, That this Sale is good; for notwithſtanding this Extent, the Property of the Goods remain in the Conuſors, and by the Extent are only ſeiſed into the King's Hands, but that ſhall not divert any Property from the Conuſors; for they be as it were in the Protection of the King, and then when the Conuſors become Bankrupt before the *Liberate*, thoſe Goods, are in the Power of the Commiſſioners to ſell and diſtribute amongſt the Creditors; and they relied eſpecially upon the Book of 3 *Ed.* 6. *Dyer* 67. where Goods be extended, yet were ſubject to be ſeiſed for the King's Debt: And they alſo relied upon the Statute of 13 *Eliz.* *c.* 7. and chiefly upon the Statute of 21 *Jac.* whereby it is provided, That Commiſſioners may ſell Goods or Lands, notwithſtanding Judgments, Statutes, Executions, or Extents, not ſerved or executed; and that, they ſaid, was not done until the *Liberate*; otherwiſe there would be a Miſchief: For then there may be an Extent, and no *Liberate* be ſued after upon it, as the Book of 31 *Hen.* 6. *Brooke* Statute 41. But all the Court reſolved, and ſeverally delivered their Opinions, That thoſe Goods, extended before they became Bankrupts, and deliver'd by the *Liberate* after they became Bankrupts, could not be ſold by the Commiſſioners; becauſe they being extended, are *quaſi in Cuſtodia legis*; ſo as the Conuſors have not any Power to give, ſell, or diſpoſe of them; and although by the Extent the Conuſee hath no abſolute Intereſt nor Property in them, until the Delivery by the *Liberate*, and at the Return of the Writ, may refuſe them for being overvalued, yet that is for the Advantage of the Conuſee: For the Extent is *Capias in manus noſtras, ut eas liberari facias*, and they be as Goods gaged or diſtrained, which cannot be forfeited by Outlawry, or taken in Execution from the Party who hath them in Gage, or by way of Diſtreſs, without Payment of the Money. *Vide* 37 *Hen.* 6. *f.* 10. 22 *Ed.* 4. *f.* 11. 3 *Hen.* 8. *Bro. Pledges* 28. and 13 *Rich.* 2. For the Goods are bound by the *Teſte* of the Writ of Extent or Execution ſued; as 2 *Hen.* 4. *f.* 14. 4 *Hen.* 6. *f.* 58. and *Coke's Rep. fol.* 171. The Goods are bound by the Execution ſued, but the Land is bound by the Judgment, and by the Extent they are to be taken by the Conuſee; and it is good againſt the Conuſor: And the Caſe here is ſtronger; for that the Extent is returned before they became Bankrupts, and the Delivery by the *Liberate* was before the Commiſſion of Bankrupts was ſued out; and it was adjudged for the Defendant. 3 *Cro.* 148. *Audley* v. *Halſey*.

22. The Aſſignees of the Commiſſioners of Bankrupts may bring Trover for Goods ſold by the Bankrupt, after the Awarding the Commiſſion; and the Sale is void, tho' the Goods were never ſeiſed. *Moor* 594. *Smith* v. *Miles*, *S. C.* 2 *Co.* 25.

23. In an Action of Trover and Converſion, by the Adminiſtrator of Serjeant *Davis*, for divers Jewels: Upon Not guilty pleaded, the Jury found for Part Not guilty; for other Jewels, that he is Guilty; and for ſixty-five great Pearls, and ſixty-five ſmall Pearls, and a Diamond Chain, they found a ſpecial Verdict; that Serjeant *Davis* was poſſeſſed of them, and being poſſeſs'd, made his Will, and thereby deviſed the Uſe and Occupation of all his Plate, Hangings and Jewels, to Dame *Eleanor*, his Wife, during her Widowhood, ſhe giving good Security to my Daughter *Lucie*, Lady *Haſtings*, to deliver and leave the ſame to my ſaid Daughter *Lucie*, at the Day of her Death or ſecond Marriage, which ſhould firſt happen. That he died poſſeſs'd of thoſe Jewels, and that after his Death, the Adminiſtration of the Goods of the ſaid Serjeant *Davis* was committed to the Plaintiff; that the ſaid *Eleanor*, the Wife of Sir *John Davis*, was the Daughter of the Lord *Audley*, Earl of *Caſtlehaven*; and that ſhe in the Life of Sir *John Davis* uſed the ſaid Jewels, *Et ut Ornamenta Corporis ſui* uſually wore them; then afterwards the ſaid *Eleanor* married with the Defendant, and that he converted thoſe Jewels, &c. And if the Court ſhall judge for the Plaintiff, they find for the Plaintiff, and Damages 370 *l.* and if not, for the Defendant. Upon this Special Verdict, it was openly argued at the Bench, and ſome nice Points ariſing in this Caſe, I thought it proper to recite the Judges Arguments: And *Berkley* and *Jones* argued for the Defendant, That ſhe being the Daughter of a Nobleman, and permitted to uſe them frequently, *ut Ornamenta Corporis ſui*, and they being convenient for her Degree, ſhe could have them as her *Paraphernalia*; and when there be not Debts to be paid, (as it doth not appear there were any) ſhe ſhall have them againſt the Executors or Adminiſtrators of her Huſband; and that the Huſband cannot diſpoſe of them from his Wife, by his Will; but inſtantly, by his Death, the Poſſeſſion of them being in the Wife's Cuſtody, the Property is immediately veſted in her, and the Huſband cannot give them away; and that is of Neceſſity and for Conveniency in the Law; for it is not reaſonable the Huſband ſhould leave her naked of thoſe Jewels which ſhe uſually did wear, and are fit (according to her Calling) to wear: And it appears by *Lyndewode*, that the Wife againſt her Huſband's Will, hath ſuch an Intereſt in Goods which are her *Paraphernalia*, that her Huſband hath nothing to do with them; but ſhe may make a Will of them in her Huſband's Life-time, and may diſpoſe of them, *in vita Mariti*, *invito Marito*; but they ſaid, This is not allowable in our Law, that ſhe ſhould diſpoſe of them in her Huſband's Life-time; but when the Huſband doth not diſpoſe of them, they are inſtantly veſted in the Wife: And although the Huſband may make a Gift of them in his Life-time, yet he cannot make a Will to diſpoſe of them, &c. and compared it to the Caſe, where a Feme hath a Term, and takes Baron, he may give and dipoſe thereof in his Life-time, but he cannot diſpoſe of it by his Will; as in the Caſe of *Barnsby* and *Grantham*, and the Caſe of *Bracebridge*, *Plow.* 416. and in the Caſe *primo Henrici quinti*, Executor 108. The King may give the Jewels of his Crown by Letters Patents; but he cannot by his Teſtament diſpoſe of them. And *Berkley* ſaid, That this Permiſſion of the Wife to wear them uſually, is as a Gift of them to her by her Huſband; and compared it to the Caſe of 11 *Hen.* 4. 83. where one takes my Son and cloaths him, or my Wife and cloaths her; it is as it were a Gift of the ſaid Apparel unto them, and I may take them again with the Apparel: And as by the Cuſtom of *London* and *Wales*, (as *Jones* ſaid) the Wife ſhall have the Moiety of the Goods, whereof her Huſband dies poſſeſſed; yet her Huſband in his Life-time may give all the Goods, but by his Will he cannot prejudice her, con-

cerning her Part; wherefore he concluded, That ſhe ſhould have them notwithſtanding the Will. And *Jones* ſaid, That by the Civil Law, as the Condition to tie her from Marriage, ſo the Limitation to have theſe Jewels during her Widowhood, is void, becauſe ſhe is abſolutely poſſeſſed of them; whereupon they concluded, That Judgment ought to be given for the Defendants. But *Richardſon*, Chief Juſtice, and *Croke*, argued to the contrary; and that this is a good Will; and that ſhe may not take them but according to the Will: But if the Husband had not made a Will, but had left them to the Diſpoſition of the Law, and the Queſtion had been betwixt the Executors or Adminiſtrators, and the Wife, where there be not any Debts or Legacies to be paid, or where there be Aſſets to pay all Debts and Legacies beſides thoſe Jewels; there, peradventure, the Law will allow her to take and enjoy them as her *Paraphernalia*. But where a Husband hath made a Will, and limited how ſhe ſhould have them, ſhe ought to take them as her Husband appointed; and his Will is as good, and as well to be performed, as a Gift in his Life-time; and that it is not like unto the Caſe of 11 *Hen.* 4. 83. for there it is a good Gift to the Son, and to the Feme, by the Raviſher; and the Husband may well aſſent unto them. So are the Caſes 11 *Hen.* 4. 12. and 34 *Hen.* 6. 10. That Goods dedicated to the Service of a Chapel or a Church, are a good Gift to the Wardens of them in Law; but this Permiſſion by the Husband, for the Wife to wear them, cannot be a Gift of them in Deed nor in Law; for the Husband cannot give any thing to the Wife, they being both but one Perſon in Law. And as to the Objection, That altho' an Husband may diſpoſe of them by Act in his Life, yet he cannot by his Will; it was anſwered, True it is, That a Man who hath a Thing Real in another's Right, or a Chattel Perſonal in another's Right, altho' he may give, yet he cannot deviſe it, as *Plow.* 192. in *Bracebridge's* Caſe. So where an Executor makes a Gift of Goods, which he hath as Executor, it is a good Gift; but a Deviſe of them is not good, becauſe he hath them *in auter droit*. But of all Chattels Perſonal, altho' the Wife had them before Marriage, the abſolute Property by the Marriage is veſted in the Husband, and he may give them in his Life, or diſpoſe of them by his Will: So of thoſe Goods which are termed *Paraphernalia*, the abſolute Property is in the Husband; and therefore he may well deviſe them. And to the Caſes, That the Husband may by Gift of all his Goods, *bona fide*, prevent his Wife that ſhe ſhall not have any Part of them, notwithſtanding the Cuſtom in *London*, *Wales*, or elſewhere; yet by his Will, if he deviſeth them, it ſhall not fruſtrate what ſhe ought to have by the Cuſtom, they agreed to be good Law; for Cuſtom is another Law, and inſtantly by the Death of the Husband veſteth the Intereſt in the Wife; but the Goods which ſhe claims as *Paraphernalia* be not given to the Wife, but thoſe which are of Neceſſity, and Conveniency for her: And when the Husband leaves her what is for her Neceſſity, *viz.* neceſſary Apparel, he may well make a Diſpoſition of the Reſidue, by his Will; and for that Purpoſe was cited 19 *H.* 6. 14. A Feme for her Quarentine may have her Living *de communi*; but ſhe may not take any thing, unleſs for Neceſſity. And where the Civil Law ſaith, That ſhe may make a Will in the Life of her Husband of her *Paraphernalia*; yet the Common Law (whereby we are to be guided) is expreſly contrary to it; That ſhe may not make a Will of any Goods but with her Husband's Aſſent; and that the Husband ſhould aſſent afterwards, and deliver the Goods according to her Will; for then it is as his own Gift: But of an Obligation or Things in Action, a Wife may make Executors by Aſſent of her Husband, and may make her Husband Executor, as appears by the Books 4 *Hen.* 6. 31. 39 *Hen.* 6. 27. 3 *Ed.* 3. *Deviſe* 12. 26 *Ed.* 3. 71. And the Intereſt, and Poſſeſſion, and Property of ſuch Goods as are call'd *Paraphernalia*, are in the Husband, and he may deviſe them to his Wife; and that ſhe ſhall take them by the Deviſe, appears 33 *Hen.* 6. 31. where

where he deviſed to his Wife her Apparel; and ſhe juſtifies the Taking of them by the Deviſe and Delivery of the Executor. 37 *Hen.* 6. 28. That ſhe ought to take only her neceſſary Apparel. 1 *Eliz. Dyer* 166. 18 *Ed.* 4. 11. 12 *Hen.* 7. 33 & 34. That the Property and Poſſeſſion of thoſe Goods be in the Husband, and ſhe may not make a Will of them without her Husband's Aſſent. And a Caſe was cited in the Exchequer. *Trin.* 28. *Eliz.* betwixt the Lord Treaſurer and others, Executors of Viſcount *Bindon*, againſt *Mary* Viſcounteſs *Bindon*, in an Action of Trover and Converſion of Jewels, of the Value of 1000 *l.* She pleads to all, beſides ſuch Jewels, which were a Chain and Bracelets, not exceeding the Value of 160 *l.* Not guilty; and as to them, ſhe pleads, That ſhe was the Wife of Viſcount *Bindon* at the Time of his Death, and ſhe uſually wore thoſe Jewels, as Ornaments of her Body; and avers, That the Executors had Aſſets to ſatisfy his Funerals, and all his Debts and Legacies, beſides thoſe Jewels; and Iſſue was taken, That they had not Aſſets to ſatisfy all the Debts and Legacies, beſides thoſe Goods: So there it is to be obſerved, That the Jewels of 160 *l.* for a Viſcounteſs, were not allowable for *Paraphernalia*, if he had diſpoſed them in Legacies. And it was anſwer'd, altho' here in this Caſe, the Defendant be the Daughter of an ancient Baron of this Realm, and of an Earl in *Ireland*, yet being married to Serjeant *Davis*, ſhe ought to have them as his Wife: And there is not any Neceſſity ſhe ſhould have a Chain of Diamonds, and the ſaid ſixty-five great Pearls, and the ſixty-five ſmall Pearls, which are Things hanging looſe, and are not in any Chain or Bracelets; and they be not for any Neceſſity for Ornament or for Covering. But *quacunque via data*, the Husband having expreſly diſpoſed of them by his Will, ſhe may not againſt his Will take them without the Aſſent of the Adminiſtrator, and without Delivery, and not of her own Head detain them, without entering Security: And where it is alledged, That in the Civil Law a Condition to reſtrain a ſecond Marriage, is not allowed; this is no Condition, but a Limitation only; and it is reaſonable ſhe ſhould take accordingly. And it was alledged, That this is not any Deviſe of thoſe Jewels, but only the Uſe and Occupation of the Plate, Hangings, and Jewels, during her Widowhood, (which may be) and no abſolute Gift of them; as is in 37 *Hen.* 30. the Caſe of *Craple*, and *Plowd.* in *Welden*'s Caſe: And they concluded, That this is a good Diſpoſition by the Will, and a Declaration of his Intent, and takes away that which otherwiſe ſhe might claim by the Law; and his expreſs Declaration controls any implied Gift, as it is pretended. And foraſmuch as ſhe hath not perform'd it, the Limitation is determined, and neither ſhe nor her Husband can have them; wherefore they concluded for the Plaintiff. 3 *Cro.* 343. Lord *Haſtings* v. Sir *Archibald Duglaſs*. See *Moor*'s *Reports* 213. Viſcounteſs of *Bindon*'s Caſe of *Paraphernalia*.

24. In Trover for Goods the Caſe was thus: The Goods were diſtrain'd by the Defendant for Rent, which he claimed as Occupant, and the Court reſolved, That the Action lay, and that there could be no Occupant of a Rent. *Telv. Salk. Bulſt. S. C.* 1 *Cro.* 901. *S. C. Moor* 664. See *Vaughan* 186.

25. In a Special Verdict in Trover and Converſion, the Caſe was this, *viz. H.* being poſſeſs'd of ſeveral Sheep, ſells them in a Market to *A.* but did not deliver them. And afterwards in the very Market they diſcharg'd each other of this Contract, and a new Agreement was made between them; which was, that *A.* ſhould drive the Sheep Home, and depaſture them till ſuch a Time, and that at the End of that Time, *H.* would pay him ſo much a Week for their Paſture; and if at the End of that Time, *A.* would pay *H.* ſo much for his Sheep, then *A.* ſhould have them.

Before the Time was expired, *H.* ſells the Sheep to the Plaintiff *Mires*, and afterwads *Alſton* ſells them to one *Marwood*, who brought a Replevin againſt the Plaintiff for taking the Sheep; and the Officers, together with

Solebay the Defendant (who was Servant to *Marwood*) did by his Order, and in Aſſiſtance of the Officers, drive the Sheep to *Marwood*'s Grounds, where they left them.

The Plaintiff demands the Sheep of *Solebay*, and upon his Refuſal to deliver them, brings this Action againſt the Servant; and Whether it would lie or not? was the Queſtion. It was argued at the Bar, That the Action would not lie againſt the Defendant, becauſe he had not the Poſſeſſion of the Goods at the Time of the Action brought; for he preſently put them into his Maſter's Ground: And it was ſaid, If *A.* find Goods, and *S.* takes them away before the Action brought, Trover will not lie againſt *A.* but it is otherwiſe, if he ſells them.

In this Caſe it would have been a Breach of Truſt in the Servant to have deliver'd the Goods belonging to his Maſter, to another: 'Tis true, if there be a Converſion, tho' the Poſſeſſion be removed before the Action brought, yet the Action will lie; but that is becauſe of the Converſion.

Many Caſes were put where the Servant is not liable to an Action for any thing done by the Command of his Maſter; and where a Bailiff, who is but a Servant to the Sheriff, ſhall not be charged in a falſe Return made by his Maſter. *Cro. Eliz.* 181. So if a Smith's Man prick an Horſe, the Action lies againſt the Maſter, and not againſt the Servant.

The Court, before they delivered any Judgment in this Caſe, premiſed theſe two Things; *viz.*

1. That 'tis neceſſary in Trover to prove a Property in the Plaintiff, and a Trover and Converſion in the Defendant. And it was ſaid by Juſtice *Atkyns* (but denied by the Chief Juſtice) that tho' Goods are ſold in a Market, yet the Property is not changed till the Delivery; for which he cited *Keilw.* 59, 77.

But the Court held clearly in this Caſe, That the firſt Sale to *Alſtone* was defeated by the Agreement of the Parties afterwards; for when a Bargain is made, and all the Parties conſent to diſſolve it, and other Conditions are propoſed, the new Agreement deſtroys the former Bargain. And the Chief Juſtice ſaid, That if an Horſe was bought in a Market, for which the Vendee is to pay ten Pounds, if the ready Money be not paid, the Property is not altered, but the Party may ſell him to another.

2. This new Agreement to have the Sheep, if *Alſtone* would pay ſuch a Sum of Money at a future Day, will not amount to a Sale, and the Property is changed; and conſequently the Sale by *H.* to the Plaintiff, before the Day, is good; and ſo the Property is in him. But by the Opinion of the whole Court, the Action would not lie againſt the Defendant.

1. The Defendant could not be guilty of a Converſion, unleſs the driving of the Cattle by Virtue of the Replevin would make him guilty; but at that Time the Sheep were *in Cuſtodia Legis*, and the Law did then preſerve them, ſo that no Property can be changed; and if ſo, then there could be no Converſion.

2. The Action will not lie againſt the Servant; for it being in Obedience to his Maſter's Command, tho' he had Title, yet he ſhall not be excuſed: And this Rule, Juſtice *Scroggs* ſaid, would extend to all Caſes where the Maſter's Command was not to do an apparent Wrong; for if the Maſter's Caſe depended upon a Title, be it true or not, 'tis enough to excuſe the Servant; for otherwiſe it would be a miſchievous Thing, if the Servant upon all Occaſions muſt be ſatisfied with his Maſter's Title and Right before he obey his Maſter's Commands; and it is very requiſite that he ſhould be ſatisfied if an Action ſhould lie againſt him for what he doth in Obedience to his Maſter: But it was ſaid, the Servant cannot plead the Command of his Maſter in Bar of a Treſpaſs; and it

was likewiſe ſaid, That in this Caſe, the driving of the Cattle to the Grounds of his Maſter, or a Stranger helping to drive them without being requeſted, is juſtifiable.

3. Becauſe what was done by the Defendant was done in Execution of the Proceſs of the Law, and he might as well juſtify it as the Officer; for if he had forbad the Defendant to have aſſiſted him, yet his Aſſiſting him afterwards would not have made him Guilty, becauſe done in Execution of Law.

4. Becauſe it is not found that the Servant did convert the Sheep to his own Uſe; for the Special Verdict only finds the Demand, and the Refuſal, which is no Converſion; and tho' 'tis an Evidence of it to a Jury, yet 'tis not Matter upon which the Court can give Judgment of a Converſion. 10 *Co.* 57.

And therefore the Jury ſhould have found the Converſion, as well as the Demand and the Refuſal, like the Caſe in 2 *Roll's Abr.* 693. in an Aſſize of a Rent-Seck; upon *Nul Tort* pleaded, the Jury found a Demand and Refuſal, *& ſic diſſeiſivit*; it was held to be a good Verdict; for the Demand ought to have been found on the Land, and ſhall not be ſo intended unleſs found.

The Plaintiff here hath ſet forth in his Declaration a Requeſt to deliver; then a Refuſal and Converſion too, which ſhews that they ought to be found, becauſe diſtinct Things; and the finding the Demand and Refuſal was only a preſumptive, not a concluſive, Proof of the Converſion; and if the Jury themſelves knew that there was a Converſion, yet the Plaintiff hath failed in his Action; as if a Trover be brought for cutting Trees, and carrying them away, and the Jury know that the Defendant cut them down, yet they ſtill lay in the Plaintiff's Cloſe; this is no Converſion.

And though it hath been ſtrongly inſiſted at the Bar, That the Court ſhall intend a Converſion, unleſs the contrary appeared, and are to direct the Jury to find the Demand and Refuſal to be a Converſion and the Opinion of *Dodridge* and *Croke*, in *Roll's Rep.* 60. was much relied on, where *Adams* recovered againſt *Lewis* 40 *l.* in the Court of *Exon*, and three Buts of Sack were taken in Execution, and the Plaintiff depoſited 22 *l.* in the Hands of the Defendant to prevent the Sale of the Sack, which was to be a Pledge to return it upon Requeſt, if the Defendant was not paid before the next Court-Day; the Jury found the Debt was not paid, and that no Requeſt was made to return the Sack, but that the Plaintiff requeſted the Defendant to return the Money: Yet it was held by thoſe two Juſtices. That the Law would ſupply the Proof of a Converſion, tho' it was not found; for it ſhall be preſum'd that the Money was denied to the Plaintiff, and that the Defendant might uſe it himſelf; and becauſe no other Proof could be made, that very Denial ſhall be a Converſion in Law; ſo a Denial of a Rent-Seck after Demand, is a Diſſeiſin; much more in Perſonal Actions, where the Subſtance is found, 'tis well enough. 1 *Inſt.* 282. *a.*

But the Court ſaid, That notwithſtanding the Authority of *Roll's Rep.* 60. 1 *Inſtitutes* 282. They would not intend a Converſion, unleſs the Jury had found it ſpecially in this Caſe, becauſe they ought to have found it to make the Servant liable; for if the Converſion was to the Uſe of the Maſter, there is no Colour for this Action to be brought againſt the Defendant, but it ought to have been brought againſt the Maſter.

Whereupon a *Venire Facias de novo* was prayed, to help the Inſufficiency of the Verdict, the Converſion not being found; but the Court ſaid, it was to no Purpoſe to grant a new Trial, unleſs the Plaintiff had a new Caſe; and ſo Judgment was given for the Defendant. 2 *Mod.* 242. *Mires* v. *Solebay*.

26. In Trover and Converſion of divers Quarters of Malt, the Caſe upon the Evidence was, That the Defendant having a great Quantity of Malt in a Veſſel, impowered one *Smith* a Broker, to ſell it; and afterwards the Defendant himſelf ſold it to a Stranger; and the ſame Day, and before Notice of the Sale by the Defendant, *Smith* ſold it to the Plaintiff, who demanded it of the Defendant, who denied it: And the Caſe was doubtful to *Rolle*; for if the Defendant's Sale ſhould ſtand againſt the Sale of *Smith*, before Notice of the firſt Sale, then ſhould he be chargeable for his Bargain, which he could not perform, without any Default in him. And on the other Side, it were hard that the Sale of the Owner, who had the abſolue Property of the Goods, ſhould be defeated by a ſubſequent Sale of him that had but a bare Authority. But in the Concluſion he declared his Opinion, That the Sale of the Defendant ſhould ſtand good, and the Broker ought in each Caſe to make his Sale conditionally, if the Maſter had not ſold it before; but he ſaid neither the Broker, nor his Vendors ſhould be liable to any Action for detaining the Goods, though demanded, without Notice given of the Sale by the Maſter. *Aleyn* 94. *Alwin* v. *Taylor*.

27. In Trover for Letters Patent of Wine Licenſe, after a Verdict for the Plaintiff, it was objected, that Letters Patent are a Record, and that there cannot be a Converſion of a Record; but the Court held, that the Letters Patent in the Declaration, are only an Exemplification of thoſe under the Great Seal; for which Trover may be brought, and they may be converted. 3 *Salk.* 367. *Anonymus.*

28. It lies for a Spaniel, but not for an Hawk, unleſs reclaim'd; and the Reaſon is for want of Property. 3 *Salk.* 365. 1 *Mod.* 243.

29. It lies for Money, tho' out of a Bag; for the Action is not to recover the Money, but the Damages. 3 *Salk.* 365. *Cro. Eliz.* 89.

30. Where *A.* and *B.* agree upon a Price for Goods which are mark'd, and *A.* promiſes to deliver them to *B.* paying ſo much Money for them; *B.* tenders the Money, and *A.* refuſes to deliver the Goods; It was adjudged by *Holt* Chief Juſtice, that it was a Bargain for the Goods; and the Plaintiff, upon a Tender of the Money, might have brought a Trover for the Goods. *Comb.* 381. *Anonymus.*

31. It was a Queſtion in the Caſe of *Darlſton* v. *Hanſon*, in *Com.* 333. Whether an Action of Trover might be join'd with an Action againſt a Carrier, upon the Cuſtom of the Kingdom, for his Negligence in loſing Goods; there was no Judgment given, but the Court inclined for the Plaintiff; and the Caſes cited by *Darnel* and *Northy* for the Plaintiff, was a Caſe in *Trin.* 24 *Car.* 2. *B. R. Owen* v. *Lewis*, where Trover, and an Action upon an *Aſſumpſit* were join'd; and upon Infancy being pleaded, it was ſaid to be adjudg'd, that theſe Actions might be join'd. 3 *H.* 4. 13. *Bro.* Joinder in Actions, 97. *Syd.* 223. *Wright* v. *Berle.*

32. This Action lies not for a Negro, *Salk.* 666. but it lies *de uno ſcripto Obligatorio. Salk.* 654.

33. It is ſaid in *Salkeld* 655. in an *Anonymus* Caſe, that an Action of Trover lies not againſt a Carrier for Negligence, as for loſing a Box; but it muſt be where there is an actual Wrong; as if he breaks it open, and takes Goods, or ſells the Box.

34. It lies not for ſix Tuns, without deſcribing what they contain; for if it is meant of empty Tuns, they ought to be call'd ſix wooden Veſſels, each containing a Tun Meaſure. *Stile* 482.

35. See in what Caſe the Property ſhall be ſaid to be alter'd by a Sale in *Market Overt*; ſo that Trover may, or may not be brought againſt him who hath the Property by ſuch Sale. *W. Jones* 163, 4. *Barker* v. *Reading.*

36. Where it was held, that Trover will lie for Money deliver'd by the Plaintiff to the Defendant to keep, tho' not in Bags. *Popham* 91.

Davies v. *Dyos*, *Godb.* 210.——*Noy* 12, *Anonymus*, *the ſame Point.* And it is reported in the laſt Caſe, that where a Maſter delivers Corn to his Servant to ſell, and does ſo, and converts the Money, the Maſter may bring an Action of Trover againſt the Servant. *Allen* 91. *Moor* 841. 2 *Bulſt.* 307. 1 *Roll's Rep.* 59, 126.

37. It was ſaid in the Caſe of Sir *John Walrond* v. *Jacob Senior Henricus Van Moſes*, that the Lord Chief Juſtice *Holt* was of an Opinion, an Action of Trover would lie in *England* for a Converſion in *Ireland*. *Mod. Caſes in Law and Equity* 322.

38. See in the Caſe of *Monk* v. *Graham in Modern Caſes in Law and Equity*: Where Trover was brought for 750 *l. South-Sea* Stock, ſold to the Defendant by one *Roſſe*, who got one to perſonate the Plaintiff in the Transfer, and the Plaintiff had a Verdict.

39. It was ſaid in the Caſe of *Jones* and *Thurloe*, by the Chief Juſtice, as reported *in Modern Caſes in Law and Equity* 172. That an Innkeeper might detain a Horſe for his Meat for one Night; yet that he could not ſell the Horſe and pay himſelf; if he did, it was a Converſion; and the Court held, that if a Man lies in an Inn one Night, the Innkeeper may detain his Horſe, till he is paid the Expences; but if he lets him depart without Payment, he gives him Credit, and hath waived the Benefit of the Cuſtom; and if he ſeiſes the Horſe for the Expences of ſeveral Nights, having let him thus depart, an Action of Trover will lie, and 'tis Evidence of a Converſion.

40. Where the Defendant comes to the Poſſeſſion by finding, in ſuch Caſe a Denial is a Converſion; but where a Man hath Goods by a Delivery, there a Denial is no Converſion, 1 *Salk.* 635, but only Evidence of a Converſion; now in both Caſes the Defendant had a lawful Poſſeſſion, *viz.* either by finding, or Delivery; and where the Poſſeſſion is lawful, the Plaintiff muſt ſhew a Demand, and a Refuſal to make a Converſion. 3 *Salk.* 365.

41. But if the Poſſeſſion was tortious; as if the Defendant takes away the Plaintiff's Hat, there the very Taking is a ſufficient Proof of the Converſion. 3 *Salk.* 365.

42. Trover will lie for 290 Pieces of Silver, and likewiſe for Plate. 1 *Salk.* 219. *Stile* 224.

43. Trover and Converſion will lie for Letters Patent. *Hard.* 111.

44. Likewiſe for a *Bill of Exchange*. 1 *Salk.* 136. *Lucas* v. *Haynes*.

45. In an Action of Trover upon a Special Verdict, the Caſe was, The Goods in the Declaration were the Plaintiff's, and by him delivered in *London*, to one *Richardſon*, to carry down to *Birmingham*. This *Richardſon* was not a common Carrier, but for ſome ſmall Time, laſt paſt, had brought Cheeſe to *London*; and in his Return took ſuch Goods as he could get, to carry back in his Waggon into the Country for a reaſonable Price. When he returned home, he put the Waggon, with the Cheeſe, into the Barn, where it continued two Nights and a Day, and then the Landlord came and diſtrained the Cheeſe for Rent due for the Houſe, which was not an Inn, but a private Houſe: And it was agreed *per Cur'* That Goods delivered to any Perſon exerciſing a publick Trade or Employment, to be carried, wrought, or managed in the way of his Trade or Employ, are for that Time under a legal Protection, and privileged from a Diſtreſs for Rent; but this being a private Undertaking, required a further Conſideration; and it was reſolved, That any Man undertaking for Hire to carry the Goods of all Perſons indifferently, as in this Caſe, is, as to this Privilege, a common Carrier; for the Law has given the Privilege in Reſpect of the Trader, and not in Reſpect of the Carrier. And the Caſe in *Cro. El.* 596. is ſtronger: Two Tradeſmen brought their Wool to a Neighbour's Barn, which he kept for his Private Uſe; and it was held, That could not be diſtrained. 1 *Salk.* 249. *Gisbourn* v. *Hurſt*.

46. In an Action for Trover and Converſion, brought for two hundred and fifty Pounds of Hops, upon Not guilty pleaded, the Caſe appeared to be, That a Feme, Tenant for Life, takes to Huſband the Plaintiff, 5 *Car.* the Remainder being to the Defendant for his Life. Theſe Hops were growing out of antient Roots, being within the Lands in Queſtion: The Feme dies 19 *Aug.* 9 *Car.* the Hops then growing, and not ſevered, &c. And whether theſe Hops appertained to the Baron, or to him in Remainder? was the Queſtion; becauſe ſhe died ſo ſhortly before the gathering of them; and as they are ſuch Things as grow by Manurance and Induſtry of the Owner, by the making of Hills, and ſetting Poles. And the Court, upon the Motion of *Grimſton*, who was of Counſel with the Plaintiff, held, That they are like Emblements, which ſhall go to the Baron or Executor of the Tenant for Life, and not to him in Remainder; and are not to be compared with Apples or Nuts, which grow of themſelves; wherefore it was adjudged for the Plaintiff. 3 *Cro.* 515. *Latham* v. *Atwood*.

47. In an Action on the Caſe for a Trover and Converſion of certain Timber-Trees: The Caſe and Queſtion was, as touching the Power of a Copyholder for Life, for the Cutting down of Timber-Trees; and whether ſuch a Copyholder may preſcribe by the Law for to cut down Timber-Trees, growing upon his Copyhold-Land, or not? *Noy*, for the Plaintiff, argued that he cannot. *Williams* Juſtice, Such a Copyholder for Life cannot preſcribe for to cut down Timber-Trees growing upon his Copyhold-Land; and to this Purpoſe, in *Luttrell* and *Wood*'s Caſe in the *C. B.* it was adjudged in Point, That a Copyholder for Life cannot preſcribe to cut down Timber-Trees, but by way of Uſage he may for Reparations. And as touching Uſage and Cuſtom, it appeareth, in 21 *E.* 4. *fo.* 28. *b.* That Uſage and Cuſtom to turn their Plow upon the Headland not ſow'd with Corn, is good; but there it is ſaid by *Littleton*, That a Preſcription againſt Reaſon is not good; as if a Cuſtom be alledged, That none ſhall put his Cattle into his Land before the Lord do put his Cattle in; this is held to be a void Cuſtom, becauſe it is againſt Reaſon; for if the Lord will never put in his Cattle, the Tenants by this will loſe the Profit of their Soil: But otherwiſe it is where a Day is limited; and to this Purpoſe, 22 *E.* 4. *fol.* 8. *A. B. pla.* 24. And that a Preſcription which is againſt Reaſon is void, and ſhall not be allowed by Law. See for this *Littleton*, *fol.* 46. *pla.* 209. and *pla.* 212. and 5 *Hen.* 7. *fol.* 96. and 10 *a.* In this principal Caſe here the clear Opinion of the Court was, That this Preſcription here for a Copyholder for Life to cut down Timber-Trees, was a Preſcription againſt Reaſon, and ſo void in Law; and ſo was the Opinion of the whole Court; but no Judgment was then given. 1 *Bulſt.* 158. The Earl of *Northumberland* Plaintiff, againſt *Wheeler* and others, Defendants.

48. In an Action of Trover for 100 Loads of Wood, upon a ſpecial Verdict the Caſe was, This Copyhold-Land was ſurrendered to the Uſe of *J. S.* for Years, Remainder to the Brother of the Plaintiff's Wife, who died before the Term expired; and ſo was not admitted any otherwiſe, than by the Admiſſion of the Tenant for Years; and it was reſolved,

Firſt, That the Admittance of him that had the Eſtate for Years, was not an Admittance for him in the Remainder. 4 *Co.* 23. *A.* 3 *Cro.* 504. Fine *ſur* Grant and Render to *A.* for Life, Remainder to *B.* Execution ſued by *A.* ſerves for *B.* So an Attornment to Tenant for Life ſerves for him in Remainder, and this brings no Prejudice to the Lord; for a Fine is not due until after Admittance; and the Lord may aſſeſs one Fine for the particular Eſtate, and another Fine for the Remainder. But *Wylde* ſaid, he need not pay it until his Eſtate comes in Poſſeſſion. After a Surrender the Eſtate remains in the Surrenderor before Admittance of the *Ceſtuy que Uſe*: Yet where *Borough-Engliſh* Land was ſurrendered to the Uſe of *J. S.* and his Heirs, and he died before Admittance, it was held, That the younger Son ſhould have it.

Secondly, It was reſolved, that the Poſſeſſion of the Tenant for Years was ſo the Poſſeſſion of him in Remainder, as to make a *Poſſeſſio fratris.* But then it was moved, That the Converſion was laid after the Marriage; and ſo the Feme ought not to have joined with her Husband in the Action. But the Court held, That in regard the Trover was laid to be before the Marriage, which was the Inception of the Cauſe of Action, the Wife might be join'd; as if one has the Cuſtody of a Woman's Goods, and afterwards marries her, ſhe may join in Detinue with her Husband; for in Caſe of Bailment the Proprietor is to ſome Purpoſes in Poſſeſſion, and to ſome out of Poſſeſſion. *Hale* ſaid in this Caſe, The Husband might bring the Action alone, or jointly with his Wife; and ſo Judgment was given for the Plaintiff. 1 *Vent* 260. *Batmore* & *ux.* v. *Graves.* *S. C.* 1 *Mod.* 102.

48. In Trover for twenty Loads of Hay; upon Not guilty a Special Verdict was found, That this Hay was Parcel of the Tithes, ſevered from the nine Parts, pertaining to the Rectory of *Hackley*, and demiſed and demiſeable Time, &c. *ſecund. Conſuetud. Manerii de Hackley*, and the Prior of *Newbery* was ſeized in Fee of the Manor and Rectory of *H.* and in 27 *H.* 8. demiſed thoſe Tithes by Copy to *H.* under whom the Defendant claimed; and afterwards, by the Diſſolution, &c. the Manor came to King *H.* 8. who convey'd it to the Archbiſhop of *York*, who let the Rectory to the Plaintiff, who claim'd thoſe Tithes: And the Defendant, under Pretence of that Copy, carried them away. *Et ſi* &c. The ſole Queſtion was, Whether thoſe Tithes were grantable by Copy, &c. And it was moved for the Plaintiff, That they were not; firſt, in Reſpect of the Nature of Tithes, wherein none could have Propriety before the Council of *Lateran*, which was in the Time of King *John*; for before that Time every one might have paid them to whom he pleaſed; but by thoſe Conſtitutions, they are annexed to the Rectory: It is then impoſſible that there ſhould be any Cuſtom to demiſe them by Copy, from Time, &c. whereas none had Intereſt in them but within Time of Memory. Tithes alſo cannot paſs but by Deed; and therefore to grant them by Copy of Court-Roll, cannot be good. There cannot alſo any thing paſs by Copy, but that which is Parcel of the Manor: But it hath been adjudged, that Tithes cannot be Parcel of a Manor, wherefore, &c. And of that Opinion was *Popham*, for the firſt and laſt Reaſons; for altho' Common, and *Prima veſtura prati*, may be granted by Copy, becauſe they be Parcel of the Manor; yet Tithes cannot be ſo, becauſe they cannot be Parcel of a Manor; for a Manor and Tithes are of ſeveral Natures, altho' they be united in one Man's Hand; and then it is impoſſible, that that which is not Parcel of a Manor can be demiſed *ſecund' Conſuetud' Manerii*; and therefore it was adiudged, in the Time of Queen *Mary*, in the Caſe of the Duke of *Suffolk*, That where one had two Manors, and granted a Copyhold of the one Manor, at the Court of another Manor, that it was a void Grant; for it cannot be a Copyhold, according to the Cuſtom of the Manor whereof it is not Parcel. But *Gawdy* doubted thereof, and conceived it had been well enough, if it had been ſo uſed from Time whereof, &c. But, becauſe upon the Verdict it did not appear, That it had been granted by Copy from Time whereof, &c. It was held, That there was not any Title found for the Defendant; and therefore adjudged for the Plaintiff. 1 *Cro.* 814. *Sands* v. *Drury.* See *Yelv.* 42. *Chambers* and *Maſon.* 1 *Bulſt.* 120. *Pultney* v. *Marſe.* *Pal.* 104. *Embden* v. *Dennis.* *Latch* 176. and 184. *Bellamy* v. *Bathorp.* *S. C.* *Noy* 89. *S. C.* *Godb.* 373. *Hadr.* 381. *Ingoldsby* v. *Tyvel* & *al'.* 3 *Lev.* 365. *Wharter* v. *Leſtes.*

49. In an Action of Trover, upon a Demurrer, the Caſe was, The Plaintiff being Owner of the Rectory of *Evingham* in the County of *Northumberland*, brought his Action of Trover for twenty Load of Wheat in *Harlow*, being the Tithes of the Rectory, ſet out from the nine Parts. The Defendant pleaded, That *Harlow* was a Member of the Manor of *Pridboe*, both which are within the Pariſh of *Evingham*, and conveys the Manor to the Earl of *Northumberland*; and preſcribes, That the Earl of *Northumberland*, and all thoſe, whoſe Eſtate he had in the ſame Manor, from Time whereof, *&c.* had paid to the Parſon of *E.* ſix Pounds annually, in Satisfaction of all Tithes within the ſame Manor; and further, That the ſaid Earl, and all thoſe whoſe, *&c.* had uſed to have in Reſpect of the ſaid ſix Pounds, the tenth Part of all the Corn within the ſaid Manor; and ſo theſe Tithes within the ſaid Manor being ſevered from the nine Parts, he took by Title under the ſaid Earl. And it was thereupon demurred, and argued for the Plaintiff, That this was not any Plea; for a Layman is not capable of Tithes, and therefore no Continuance of Time can give him any Title to that, whereof he is not capable; for by the ancient Courſe of our Law, he cannot ſue for them; and the Civil Law did not permit a Man to ſue for them there; and ſo he had not any Remedy, and therefore not any Right. Alſo none can preſcribe in a Thing in Groſs, *per que Eſtate*; and here he preſcribes as for a Thing in Groſs: And he cannot preſcribe as to a Thing appurtenant to a Manor; for a ſpiritual Thing cannot be appendant to a temporal; and for that Purpoſe cited a Caſe to be ruled in this Court betwixt *Shirwood* and *Winchcomb.* 39 *Eliz.* Wherefore, *&c.* But all the Court, upon the firſt Motion, reſolved to the contrary, That it is a good Preſcription; that when the Lord hath uſed from Time, whereof, *&c.* to pay this Sum, *&c.* and in Reſpect thereof to have all the Tithes within this Manor, it ſhall be intended, That at the Beginning the Lord had all in his Hands, and then might preſcribe to pay a Sum in Diſcharge of all the Tithes within the Manor; and when he gave the Tenancies to hold of him, and always afterwards uſed to have the Tithes of thoſe Lands and Tenements; it is a very reaſonable Preſcription: For now he hath no more than what he had before: for he had them before by Retainer, and now he takes the Tithes themſelves. And *Gawdy* ſaid, It may be true, that the Parſon before Time of Memory granted thoſe Tithes to the Lord of the Manor, rendering Rent, which was confirmed by the Patron and Ordinary; and this being before Time of Memory, may well be ſo intended *Quod Popham conceſſit*, and ſaid, That that was their principal Reaſon of the Judgment between *Pigot* and *Hearn.* And they ſaid, That in this Caſe the Lord might have good Remedy at the Common Law, or in the Spiritual Court; wherefore they intended to have adjudged it for the Defendant. But then an Exception was taken to the Pleading, That the Converſion was ſuppoſed 10 *Sept.* 40 *Eliz.* and the Defendant ſaith, That he found them the 20 *Sept.* 40 *Eliz.* and converted the 10th of *Sept.* which is repugnant in itſelf, which the Court held incurable. *Vid.* 1 *&* 2 *Ph. & Ma. Dyer* 3. 1 *Cro.* 763. *Pigot* v. *Simpſon* and others.

50. Trover for Goods tried at the Bar by a Jury of *Kent*; upon the Trial the Caſe was thus:

The Earl of *Winchelſea* in the Month of *Auguſt*, 1689. made his Will, and thereby deviſed to the Plaintiff all his Perſonal Eſtate to pay his Debts, *&c.*

The Will was proved:

But immediately upon the Death of the Earl, and before he was buried, the Defendant who was married to the eldeſt Son of the ſaid Earl, took Poſſeſſion of the Houſe and Goods in the Declaration mentioned.

The Plaintiff produc'd the Will under the Probate, then ſhe proved that the Goods were appraiſed at 1800 *l.* She produced an Inventory of them, and proved that they were the ſame contained in the Declarations, ſhe likewiſe gave Evidence of the Converſion.

The Defendant produced a Deed of Gift of theſe Goods made by the Earl in the Year 1650. *habendum* to the Truſtees therein named for the Uſe of his then Lady (but ſince dead) for the Term of her natural Life, and afterwards that they ſhould be and remain to his Children.

The Counſel for the Plaintiff admitted, That tho' the ſame Goods for which this Action is brought, were likewiſe contained in the Deed of Gift, yet that Deed could not be good againſt a Creditor.

That the Earl being in Debt a Judgment was obtained againſt him, and by a *Teſtatum fieri fac.* his Goods were taken in Execution, and ſold by the Sheriff in *Hillary* Term 1657, for 800 *l.* which was after this Deed of Gift.

It was proved that his Steward paid the Money, and redeemed the Goods, and the Earl gave him a Bond for Repayment, which was done, and the Bond cancelled; ſo by this Means he had gained a new Property. A Copy of the *Teſtatum fieri fac.* was produced, and likewiſe the Bill of Sale by the Sheriff, and the Bond cancelled, and thereupon the Plaintiff had a Verdict. 4 *Mod.* 51. The Counteſs of *Winchelſea* againſt the Lady *Maidſtone*.

51. An Action of Trover and Converſion was brought againſt a Bailiff for taking Goods by Virtue of a *Fieri facias*; and the Queſtion was, Whether the Bailiff, it appearing that he took the Goods by Virtue of a *Fieri facias*, could be ſaid to be guilty of a Converſion to his own Uſe, admitting that the Goods were not ſubject and liable to the ſaid Execution; and it was adjudged for the Defendant. 2 *Syd.* 271. *Baily* v. *Bunning*, *S. C.* 1 *Lev.* 173.

52. In Trover the Plaintiff declared, That he was poſſeſſed of divers Goods, *viz.* of fifty Pieces of Gold, coined within this Kingdom, *ac de viginti petrat. Carnis Bovinæ*, (*anglice*, twenty Stone of Beef,) *ac de viginti Vaſibus*, (*anglice*, wooden Veſſels) as his proper Goods, which he loſt, *quæ quidem Bona & Catalla poſtea apud* ſuch a Place, *ad manus & poſſeſſionem* of the Defendant *per invention' debuerunt*.

There was a Verdict for the Plaintiff, and entire Damages given. And now it was moved in Arreſt of Judgment, and theſe Exceptions were taken:

1. He hath declared, That he was poſſeſſed of fifty Pieces of Gold coined within this Kingdom, but doth not name what Money it was, for which Reaſon it is incertain; for Pieces of Gold are coined here of ſeveral Values.

2. That he was poſſeſſed *de viginti petrat. Carnis bovium.* Now there is no ſuch Word as *petrat'*, which ſignifies a Stone of Beef, and there is a proper Word for a Stone-Weight: And the Rule is, when an improper Word is put in the Declaration, for which there is a proper Word to ſignifie the ſame thing, 'tis always held to be naught.

3. That he was poſſeſſed *de viginti vaſibus*, (*anglice*, wooden Veſſels) the Word *vas* is too general: So *de uno pullo* hath been held ill for the ſame Reaſon.

4. 'Tis ſaid, theſe Goods *ad manus* of the Defendant *per invention' debuerunt*, inſtead of *devenerunt*; for which Reaſon this is not a good Declaration. It was ſaid on the other Side, That in the firſt Year of the King, the Plaintiff declared in Trover, that he was poſſeſſed *de una pecia Branditti vini*, and that was held good after Verdict, though there is a proper Word for Brandy. *Adjournatur.* 5 *Mod.* 324. *Salisbury* v. *Proctor*.

53. In an Action of Trover and Converſion of certain Loads of Wood, upon a ſpecial Verdict the Caſe was; Sir *Thomas Palmer* was ſeiſed of a

great Wood, and bargained and ſold to one *Cornford*, and his Aſſigns, as many Trees as would make 600 Cords of Wood, to be taken by the Aſſignment of Sir *Thomas Palmer*. *Cornford* aſſigns over his Intereſt to the Plaintiff. Afterwards Sir *Thomas Palmer* granted to the Defendant ſo much of his Wood as would make 4000 Cords, to be taken at the Defendunt's Election. The Plaintiff afterwards, by the Aſſignment of Sir *Thomas Palmer*, cut down the Trees in Queſtion, to make 600 Cords. And the Defendant claiming them by Virtue of his Grant, took them, and 'twas found, That there was ſufficient Wood left for the Defendant to take his 4000 Cords. *Et ſi, &c.* And upon this Verdict it was moved, That here was not a ſufficient Title found for the Plaintiff. For firſt, It is not found, that the Bargain and Sale was for any Sum of Money, nor upon any Conſideration. *Sed non allocatur*; for it is intended to be ſo, being found by the Verdict. But if it had not been ſo found, it might peradventure have been otherwiſe. As 1 *Mar.* 19 *Dy.* is. Secondly, It was alledged, That this Grant to the Plaintiff is void: For, until the Aſſignment made by Sir *Thomas Palmer*, no Intereſt veſted in *Cornford* himſelf, ſo as he could not make any Grant thereof over. But all the Court held the Grant to be Good: For being made to him and his Aſſigns, he may make an Aſſignee which ſhall enure as a Nomination to one who is to have by the Appointment of Sir *Thomas Palmer*; and it may well veſt in him, as the Intereſt alſo. And here he hath an Intereſt before the Aſſignment made by Sir *Thomas Palmer*; inſomuch as if Sir *Thomas Palmer* will not aſſign it in convenient Time, he himſelf might take them. And therefore he may aſſign this Intereſt, as 44 *Ed.* 3. 43. is. But admitting the Grant to the Plaintiff had been void; yet *Popham* ſaid, That the Action was maintainable; becauſe by the cutting down of them he had Poſſeſſion, and a good Title againſt the Defendant, and every Stranger: And being cut down, it was not lawful for the Defendant to take them: For if one ſells 1000 Cords of Wood, to be taken at the Vendee's Election; and afterwards the Grantor himſelf, or a Stranger, cuts down Parcel of the Wood; the Vendee cannot take that which is cut down: But he ought to make his Grant good out of that which is growing. As if Eſtovers were granted unto him, to be taken in a Great Wood, and the Owner of the Wood cuts down ſome Wood, the Grantee cannot take that which is cut down; but he muſt take his Eſtovers out of the Reſidue. And if all be cut down, he hath not any Remedy, but an Action on the Caſe. So here, altho' the Plaintiff had not a good Title, yet his having Poſſeſſion of them, being cut down, ſufficeth. *Quod Gawdy* and *Clinch conceſſerunt*. Wherefore it was adjudged for the Plaintiff. 1 *Cro.* 819. *Baſſet* v. *Maynard*. 5 *Co.* 24. *b.*

54. An Action of Trover and Converſion was brought, on Not guilty pleaded, there was found a ſpecial Verdict to this Effect;

Francis Bayle being a Merchant, had made a fraudulent Deed to the Defendant of the Goods contained in the Count; but afterwards he went Abroad to Church, and to the *Exchange*; and did trade and commerce. And yet afterwards it is contained in the Indenture of Sale, by the Commiſſioners to the Plaintiff, that he had made this fraudulent Deed; and that afterwards he had traded and attended at the *Exchange* until a Day after; at which Day he wholly abſented himſelf. And upon this Special Verdict the Defendant had Judgment. For every Deed to defraud other Creditors (but thoſe to whom this Deed is made) is not ſufficient to make one to be a Bankrupt; it ſhall not bind: But upon the Statute of 1 *Jac.* which makes him a Bankrupt who makes fraudulent Deeds; it ought not to be as this Caſe was; *viz.* So long before he became a Bankrupt. And there were many more Imperfections in the Special Verdict. *Hut.* 42. *Cartwright* v. *Underhill*. See *T. Jones* 94. *Butler* v. *Waterhouſe*.

55. Trover for his Anchor and Sails: Upon Not guilty pleaded, a Special Verdict was found, *viz.* That the Mayor and Burgeſſes of *Newcaſtle*, by Cuſtom Time out of Mind, had uſed and ought to repair the Port there; and had, in Conſideration thereof, a Toll of 5 *s. per* Chaldron of all Coals exported, to be paid by the Exporter; and for that, by the ſame Cuſtom, he uſed to diſtrain any Thing diſtrainable; and that the Defendant being Maſter of a Veſſel loaded with Coals, intended to be carried out of the ſaid Port, refuſed; and for this they diſtrained the ſaid Anchor and Sails, being Part of the Tackle belonging to the ſaid Ship: And if this was diſtrainable, they found for the Defendant; otherwiſe for the Plaintiff. And Mr. *Northey* urged, That the Concluſion of the Special Verdict being upon a Special Point, the Court could doubt of nothing but what was thereby referred to them. *Vid.* 5 *Co.* 97. 1 *Cro.* 21. *Mo.* 261. *pl.* 420. However the Court heard and over-ruled all the other Objections, and held, 1ſt, That it was not neceſſary the Town ſhould ſhew that they actually did keep the Port in Repair; for their keeping the Port in Repair, is not the Conſideration, but their being bound by Cuſtom to do it. 2dly, That tho' the Maſter is not ſtrictly the Exporter, yet as to Port-Duties, the Maſter is always looked upon as ſuch, and the Perſon anſwerable; for to put them to ſeek the Merchants is impracticable; and it is but reaſonable the Maſter ſhould pay a Duty for the Benefit of the Port, and that the Town ſhould have the Duty, who are to maintain the Port. As to the Diſtreſs, it was argued, That the Inſtruments of Trade are not diſtrainable; *viz.* a Milſtone is not; *Avaria carucæ* are not; a Horſe in a Smith's Shop cannot be diſtrained; that the Goods ſubject to Toll only can be taken; and this was Part of the Ship, and going from Market. *Vide* 3 *Cro.* 227. *pl.* 14. *Dyer* 199, 1 *Leon.* 231, 105. 3 *Dro.* 550, 569. *Noy* 88. 1 *Inſt.* 47. 1 *Syd.* 341. *Dyer* 312.

On the other Side it was ſaid, *Averia Carucæ* are not privileged where there is no other Diſtreſs. *Vid. Stat.* 51 *H.* 3. 2 *Inſt.* 122, 133, 565. So it is of Inſtruments of Trade; as if there be two Mill-Stones, or *averia otioſa.* *Mo.* 214. *Dyer* 302. *Godb.* 67. *Owen* 149. A Boat is diſtrainable; *ergo* a Ship, and *ergo* a Sail of a Ship. *Dyer* 177. *pl.* 73.

Sed per Holt, Ch. Juſt. The Duty ariſes from the Goods loaded on board the Ship, with which the Maſter is chargeable; therefore the Ship, and every thing there of the Maſter's, is chargeable as well as the Goods; And the Defendant had Judgment. *Salk.* 1. *Vol.* 248. *Vinkeſtone* v. *Ebden.*

56. In Trover, the Defendant pleaded a Recovery againſt *J. P.* and that a *Fieri facias* was awarded to the Sheriff; and after the Writ awarded and delivered to the Sheriff, *J. P.* died poſſeſſed of the Goods, and made the Plaintiff his Executor; and afterwards the Defendant, by Force of the Sheriff's Warrant, took theſe Goods in Execution, as Bailiff to the Sheriff, and delivered them to him. The Plaintiff replieth, That the Sheriff returned the Writ *Tarde*; and upon this it was demurred in Law. 1. Queſtion, If the Party dying after the Writ of Execution awarded, and before it was ſerved; if it may be ſerved upon his Goods, in the Hands of his Executors or Adminiſtrators? And it was held, It might; for by the Execution awarded, the Goods were bound, and the Sheriff need not take Notice of his Death. 26 *H.* 7. 5. 6 *E.* 6. *Dyer* 76. 2. Queſtion, If the falſe Return of the Sheriff ſhall make the Bailiff puniſhable for that he did lawfully; for he was a Bailiff's Meſſenger, and a meer Servant to the Sheriff, and not a Bailiff of a Franchiſe. And it was held clearly, that it ſhould not; for by the Execution of the Bailiff, the Party was diſcharged of the Execution; and therefore there is not any Reaſon he ſhould take Advantage againſt the Bailiff; and it was adjudged for the Defendant. 1 *Cro.* 181. *Parkes* v. *Moſſe.* *S.C.* *Moore* 352.

Other Caſes where this Action hath been held to lie, and where not.

Hetley 22. *Owen* v. *Price.*
Allen 81. *Udal* v. *Udal.*
91. *Davies* v. *Dyos.*
3 *Cro.* 271. *Chapman* v. *Allen.*
274. *Petty* v. *Sands.*
515. *Latham* v. *Atwood.*
544. *Lyſter* v. *Home.*
94. *Owen* v. *Ap Rees.*
148. *Audley* v. *Halſey.*
89. *Kynaſton* v. *Moore.*
262. *Wilſon* v. *Chambers.*
2 *Keb.* 588. *Wilbraham* v. *Snow.*
3 *Keb.* 74. Duke of *Buckingham* v. Lord *Pembroke.*
451. *Gibſon* v. *Thomſon.*
718. *Bull* v. *Knight.*
751. *Buter* v. *Wakerhouſe.*
785. *Butts* v. *Penny.*
834. *Clerk* v. *Payter.*
Allen 93. *Alwin* v. *Taylor.*
Ray. 472. *Put* and *Hardy* v. *Rawſtern* and others.
Danv. Abr. 20, 21.

Secondly, Who may bring the Action.

1. One *Part-owner* of a Ship may bring an Action of Trover for the whole Ship. *Comb.* 367. *Dockwray* v. *Dickerſon.*

2. If an Infant Executor Releaſes, yet he may afterwards bring an Action of Trover, if ſuch Releaſe was not made upon a valuable Conſideration. 5 *Co.* 27. *Ruſſell* v. *Pratt. Moor* 146. 1 *And.* 177. 1 *Leon.* 44.

3. An Adminiſtrator may bring an Action of Trover and Converſion, before Letters of Adminiſtration granted. *Stile* 341. *Long* v. *Hobb.*

4. A Man may bring an Action of Trover and Converſion for Goods, tho' they afterwards come to his Hands again. *Stile* 261. *Gower* v. ——

5. Where Trover has been brought by *Baron* and *Feme*, and they declare, that they were poſſeſſed, and that the Defendant converted them *ad dampnum ipſorum*; it was held naught after a Verdict; for the Poſſeſſion of the Wife, is the Poſſeſſion of the Husband. 1 *Salk.* 114. *Neltborpe* & *Ux.* v. *Anderſon.* 1 *Ven.* 33, 24, 12.

6. In an Action of Trover and Converſion, it was moved in Arreſt of Judgment, that the Action was brought by *Baron* and *Feme*, and the Trover ſuppoſed to be before, and the Converſion ſubſequent to the Coverture, and therefore it ought to be brought by the *Baron* alone; for if a *Feme* loſes Goods, and after marries, the Husband dies, his Executor ſhall have the Goods, becauſe the Property was in him by the Marriage, notwithſtanding the Loſs. And of this Opinion was *Hyde* Chief Juſtice, and *Kelynge*; and they alſo held, that the Converſion is the Cauſe of the Action, and that being ſubſequent to the Marriage, the Husband ought therefore to bring the Action alone. But Judge *Twiſden* and *Wyndham* were of Opinion, the Action was well brought; and they diſtinguiſh'd between Actions which affirm the Property, as *Replevins* and *Detinues*, which they therefore held, ought to be brought only in the Husband's Name, and Actions which diſaffirm the Property, as *Treſpaſs* and *Trover*, which being founded on a *Tort antecedent* to the *Coverture*, ought therefore to be brought in both their Names. 2 *Syd.* 172. *Powes* & *Ux.* v. *Marſhall. V.* 1 *Cro.* 508. *Rivers* v. *Gidskert.*

7. Where the Inteſtate died in the Defendant's Houſe, and *A.* breaks open a Cheſt, and takes away Money of the Inteſtate's; it was by *Holt* Chief Juſtice held, that the proper Action is an Action of Trover by the Adminiſtrator, againſt the Perſon that took it away; and if the Trover were firſt, and the Adminiſtration afterwards, the Plaintiff may either declare ſpecially, or lay the Trover after the Adminiſtration granted; and it will be good either way. *Comb.* 304.

8. Where *A.* dies Inteſtate, and *B.* hearing of it, requeſted *C.* to provide for the Funeral, and that *B.* would reimburſe him; afterwards *B.* and *C.* come to an Account, and *B.* delivers to *C.* a Horſe of the Inteſtate's, in Satisfaction of Part of the Charges of the Funeral, which *C.* accepted of; and afterwards *C.* took out Adminiſtration, and brought an Action againſt *B.* for this very Horſe. Chief Juſtice *Holt* was of Opinion, that *C.* might bring this Action, notwithſtanding the Objection, that he was *particeps criminis*; for ſays he, clearly, if a Stranger had taken out Letters of Adminiſtration, he might have brought an Action againſt *B.* and there is no Reaſon that this Caſe ſhould differ, becauſe the Plaintiff is *quaſi* a third Perſon, inaſmuch as he now ſues in Right of the Inteſtate; but the other Judges were of a contrary Opinion; and Judgment was given for the Defendant. *Carthew* 103. *Whitehall* v. *Squire*.

9. One Jointenant, Tenant in Common or Coparcener, can't bring this Action againſt his Companion, but he may againſt a Stranger. *Salk.* 290. *Browne* v. *Hedges*.

10. A Goldſmith has Lottery-Tickets of *A.* and *B.* and delivers *A.*'s Tickets to *B.* as his own; *A.* may bring this Action againſt *B.* *Salk.* 283. *Ford* v. *Hopkins*.

11. If after an Execution by *Fieri facias* is executed, and before the Goods are ſold, any Perſon takes them away, and converts them to his own Uſe, the Sheriff may bring an Action of Trover and Converſion for them. 2 *Saund.* 47. *Wilbraham* v. *Snow*. 2 *Syd.* 447. 1 *Mod.* 40.

12. Trover may be brought by an Executor, tho' the Poſſeſſion he had of the Goods was not an actual Poſſeſſion, but only a Poſſeſſion given him by Law. 2 *Mod.* 168. *Latch* 214. *Hudſon* v. *Hudſon*.

13. Where the Maſter may have an Action againſt the Servant for Money converted by him. *Noy* 12. *Anonymus*.

14. It hath formerly been a Doubt, whether Executors could maintain an Action of Trover, and it hath been inſiſted that an Action of Treſpaſs *de bonis aſportatis in vita Teſtatoris*, was their proper Remedy: And it appears by *Savil*, *Rep. p.* 133. that this Opinion prevail'd once; and in *Gouldsb. p.* 89. 'twas doubted: Soon after, as appears by the Caſe of the Counteſs of *Rutland*, in *Cro.* 377. *Moore* 266. and *Owen* 156. and by the Caſe of *Ruſſel* and *Prat*, reported in 1 *And. p.* 177. *Moore* 146. 5 *Co.* 274. 4 *Leon.* 44. and *Noy* 70. it was ſolemnly adjudged, that Executors might maintain an Action of Trover and Converſion; nor does it appear That this Point was ever queſtion'd ſince, tho' many ſuch Actions have been brought.

15. *Fremling* and his Wife, Executrix of *A. B.* brought an Action of Trover and Converſion againſt *Clutherbook*, for Goods of the Teſtator's found and converted by the Defendant, and obtained a Verdict againſt him. The Defendant moved in Arreſt of Judgment, and took theſe Exceptions. Firſt, That the Declaration was of a Joint Poſſeſſion of Goods of the Huſband and Wife, and Damages are given to the Huſband and Wife, whereas the Goods properly belonged to the Wife only, as the Executrix, and not the Huſband and Wife. Secondly, it doth not ſet forth how the Feme came to the Poſſeſſion of the Goods. But to this *Rolle*, Juſtice, anſwered, that the Poſſeſſion of the Wife, as Executrix, was alſo the Poſſeſſion of her Huſband, and that the Damages recovered ſhall go to the Eſtate of the Teſtator, and ſo may concern them both; and for the ſecond Exception, this being a Poſſeſſory Action only, it is not neceſſary to ſhew how the Poſſeſſion of the Goods was gained. Judgment was ſtaid till the other ſhould move. *Stile* 48. *Fremling* and *Clutterbook*.

16. The Plaintiffs brought an Action of Trover and Converſion, as Executors, againſt the Defendant, for an Obligation, and declared it was loſt in the Teſtator's Time, but laid the Converſion ſince his Death. Two of the Executors were ſever'd, and a *Non proſ.* entered as to them; and to the Third the Defendant pleaded *Non cul.* and found againſt him,

and five Hundred Pounds Damages given; and it was now moved in Arreſt of Judgment upon this Severance; and held by *Hale*, Chief Baron, and the whole Court, That Summons and Severance lies not in this Caſe, becauſe the Converſion, which is the moſt material Part of the Declaration, was in the Executors own Time; ſo that upon the Matter, the Action is grounded on their own Poſſeſſion, as Treſpaſs of their own Poſſeſſion; in which Caſe Summons and Severance does not lie, and conſequently the Nonſuit of one is the Nonſuit of all; and all the Proceedings after are to no Purpoſe. *Per Hale*, Chief Baron, There are two Sorts of Severances; when the Plaintiff will not appear, there he ſhall be ſummoned and ſevered; the other, when all appear, but ſome one or more will not proſecute; there he or they ſhall be ſevered by Order of Court; and Judgment in this Caſe was arreſted. *Hardr.* 317. *Manley & al'* v. *Lovell.*

Other Caſes by whom Action is to be brought.

1 *Ven.* 26.	*Batmore* v. *Graves.*
3 *Cro.* 254.	*Rhemes* v. *Humphrys* and others.
3 *Cro.* 242.	*Berry* v. *Heard.*
3 *Cro.* 437.	*Tregmiel* v. *Reeve.*
274.	*Waller* and *Petty* v. *Sands.*
3 *Keb.* 54.	*Smyth* v. *Smyth.*
206.	*Chambers* v. *Patinſon.*
263.	*Blackborne* v. *Greves.*
282.	*Sykes* v. *Walls.*
Ray. 463.	*Wedgewood* v. *Bayly.*
2 *Sound.* 47.	*Wilbraham* v. *Snow.*

Thirdly, **Againſt whom it may be brought.**

1. Trover lieth againſt a Carrier for the Owner of the Goods; and it may be brought by the Carrier againſt him who ſo took them away. *Comb.* 21. 1 *Ven.* 223. *Comb.* 333. *Salk.* 655.

2. Trover was brought againſt an Hackney Coachman, and the Goods were deliver'd to his Servant; and whether this Delivery ſhall charge the Maſter, was the Queſtion, and adjudg'd that it ſhall not; for that it differs from a Waggoner, where he is paid for the Paſſenger, and the Parcel alſo; but in a Coach the Paſſengers are allow'd to carry a ſmall Parcel; and if any more be carried, for whch the Driver is paid, and 'tis loſt, the Maſter ſhall not be chargeable; otherwiſe where the Maſter is paid for it, and agrees to it. *Skinner* 625. *Middleton* v. *Fowler.*

3. It hath been held, where an Action was brought againſt a Husband and Wife; and it was laid, that the Converſion was *ad uſum ipſorum, &c.* and both were found Guilty, and the Damages aſſeſs'd, that it is ill; for they ought not to be join'd. *Salk.* 114. *Nelthorp & Ux.* v. *Anderſon.* 38 *E.* 3. 1. 13 *R.* 2. 644. 3 *Cro.* 254. *Rhemes* v. *Humphrys. Palmer* 343. *Berrey* v. *Nevey. Stile* 115. This laſt Caſe was where a Stranger was join'd with them in the Converſion.

4. And yet in 1 *Leon.* 312. *Marſhe*'s Caſe, where Goods came to a Feme Covert by Trover, and ſhe and her Husband converted them to their own Uſe, and the Action was brought againſt the Husband only. It was held it ought to have been brought againſt the Husband and Wiſe; *but this does not ſeem to be Law. Noy* 79. *W. Jones* 143. *Litt. Rep.* 181. *Yelv.* 165. *Draper* v. *Hulkes*, to the ſame Purpoſe. *Buller*'s Caſe adjudg'd to the Contrary. *W. Jones* 267.

5. Whether an Action of Trover may be brought againſt a Waterman, for Goods miſcarried, by Reaſon of a Tempeſt. 2 *Bulſt.* 289. *Bird.* v. *Aſtcock.*

6. Upon a Trial at *Niſi prius* at *Guildhall*, before my Lord Ch. Juſtice *North*, in Trover and Converſion againſt an Executor *de ſon Tort*; the Queſtion came to be, Whether the Goods having been taken in Execution, upon a Judgment obtained againſt the Defendant by a Creditor of the Deceaſed, ſhould diſcharge him againſt the Plaintiff, who brought

this Action as Adminiſtrator. And the Opinion of the Chief Juſtice was, That this Execution was a good Diſcharge againſt another Creditor that ſhould ſue him, to whom he might plead *Riens inter ſes mains*; but it was no Diſcharge againſt an Adminiſtrator, for Men muſt not be encouraged to meddle with a perſonal Eſtate without Right: But to prevent this Miſchief, where the Party dies Inteſtate, and there is a Conteſt about the Adminiſtration, a Man may procure of the Ordinary Letters *ad Colligendum*. 1 *Vent*. 349.

7. In Trover and Converſion of Goods. Upon a Demurrer, the Caſe was, The Ordinary committed Adminiſtration of the Goods of an Inteſtate to the Defendant; afterwards the next of Kin ſues out a Citation in the Court-Chriſtian againſt the Defendant, to repeal the Adminiſtration, and he, *pendente lite*, ſells thoſe Goods, and afterwards his Adminiſtration is repealed, and Adminiſtration committed to the Plaintiff, who for this Converſion, *pendente lite*, brings this Action; and 'twas moved for the Defendant, That the Action lies not; for the Adminiſtration at the Common Law is well committed, and the Statute doth not alter the Law in this Point, but gives a Penalty againſt the Ordinary, if he commits them not to the next of Kin; and the Adminiſtrator, until Adminiſtration repealed, hath an abſolute Authority to diſpoſe of the Goods as he pleaſes. *Tanfeild econtra*. The Converſion, *pendente lite*, in the Court-Chriſtian is not lawful, but is a Tort to the Plaintiff, and that, the Sentence there proves; which is, that all Things exempted, or done, *pendente lite*, ſhall be void; and the Juſtices ought to have Regard to the Civil Law in this Point, as in 27 *H*. 6. *Gard*. 118. 2 R. 2. *Quare Impedit*, 143. and 4 *H*. 7. 13. And by the Sentence it appears that the Adminiſtration is revoked as if it had never been. And upon this Reaſon it is in *Dyer* 339. where an Adminiſtrator recovered a Debt, and afterwards another procured himſelf to be joined in the Adminiſtration, and releaſed the Debt, and afterwards it being revoked, this Releaſe was not any Bar to the Execution; and *Mich*. 35 & 36 *Eliz*. in the Common Bench, between *White* and *Cary*, this very Point was in Queſtion, and adjudged, that the Action lay. *Gawdy*. The Action well lies; for the Sentence does not repeal mean Actions, Acts done by an Adminiſtrator which are for the Inteſtate's Benefit; but foraſmuch as theſe Goods were not converted or employed for the Inteſtate's Uſe, it is reaſonable that he ſhould be charged for them. *Popham* and *Fenner econtra*. For the Adminiſtrator hath an abſolute and lawful Intereſt and Power to diſpoſe of the Goods until Repeal be made, and it is not like to an Appeal upon a Sentence, for that makes it as no Sentence; but the Repeal of the Letters of Adminiſtration doth not make it void *ab initio*, and make a lawful Act tortious; but rather in this Caſe, the new Adminiſtrator ſhall have an Account for the Monies received, and the Words in the Sentence are not to be regarded, for they are ordinary in all Sentences. So he having the Goods lawfully, and converting them lawfully, ſhall not anſwer for them as for a Tort done. And *Popham* here ſaid, If Adminiſtration being committed, the Ordinary commits new Adminiſtration, it is a Repeal of the former, without any Sentence of Repeal; and if the firſt Adminiſtrator waſte the Goods, the Creditor ſhall have the Action againſt him; and if he pleads, that Adminiſtration is committed over, he may well by his Replication maintain his Action, becauſe he waſted the Goods when he was Adminiſtrator; the Matter was adjourned: But afterwards the Action was diſcontinued by the Plaintiff. 1 *Cro*. 469. *Wilſon* v. *Packman*. 6 *Co*. 18. *S. C.* and *Moore* 369.

8. If after a Verdict, and before the Day in Bank, or after Judgment, the Plaintiff's Letters of Adminiſtration are repealed, whereby the Defendant becomes liable to the new Adminiſtrator, he cannot in either Caſe aid himſelf by Plea, but ſhall be relieved on an *Audita Querela*. *Telv*. 125. *Ket*. v. *Liſe*. 2 *Saund*. 147. *Turner* v. *Davis*.

9. An Action of Trover and Converſion was brought for an Hat-band ſet with Pearls and Diamonds. Upon Not guilty pleaded, a ſpecial Verdict was found, that the Plaintiff was poſſeſſed thereof, and pawn'd it to *John Whitlock* for 25 *l.* but no certain Time appointed for the Redemption thereof; that *Whitlock* being ſick, his Wife in Preſence, and with his Aſſent, delivered it to the Defendant, and afterwards *Whitlock* made his ſaid Wife his Executrix, and died, who proved the Will; that the Plaintiff tendered to the ſaid Executrix the ſaid 25 *l.* who refuſed, and afterwards demanded the Hat-band of the Defendant, who refuſed to deliver it, but converted it to his own Uſe; whereupon, &c. And in this Caſe, three Points were moved; Firſt, There being no Time appointed for the Redemption, whether it may be made after the Death of him to whom it was pawn'd, or ought to be in the Lives of both the Parties? And as the Juſtices reſolved, It may be well made after the Death of him to whom it was pledged, but not after the Death of him who pledged it. *Telverton* and *Croke* doubted, and held that it could not; for he at his Peril ought to redeem it in his Time, as it is upon a Mortgage. But *Fleming* and the others againſt it; for Pledging doth not make an abſolute Property, but is a Delivery only until he pays, &c. ſo it is a Debt due to the one, and a Remainder of the Thing unto the other, for which there may be a Redemand at any Time upon Payment of the Money; for the Pledge delivered is but as a Security for the Money lent, ſo as he who borrows the Money is to have his Pledge again when he repays it, and his Tender gives him an Intereſt therein; and there is a Difference between a Mortgage of Land and Pledging of Goods, for the Mortgagee hath an abſolute Intereſt in the Land, but the other hath but a ſpecial Property in the Goods, to detain them for his Security. 5 *H.* 7. 1. 9 *Ed.* 4. 25. 36 *Ed.* 3. *Bar.* 188. Secondly, It was reſolved, that by this Delivery of the ſaid Goods by the Feme, with the Aſſent of her Baron, to the Defendant, there paſſed no Intereſt of them to the Defendant, but (as it were) a Cuſtody only; and therefore the Tender of the Redemption ought to be made to the Executrix, and not to the Defendant, Thirdly, That when he tendered the Money to the Executrix, and ſhe refuſed, it was as good as Payment, and the ſpecial Property of the Goods is reveſted in the Plaintiff; then when he demanded them of the Defendant, and he refuſed to deliver them, but converted them to his own Uſe, a Trover and Converſion well lies, although he came unto them by a lawful Delivery, and not by Trover; wherefore it was adjudged for the Plaintiff. 2 *Cro.* 244. *Ratcliff* v. *Davis. S. C. Telv.* 158. *S. C.* 1 *Bulſt.* 29.

10. An Action on the Caſe was brought againſt Executors, and the Plaintiff declared, That he was poſſeſſed of divers Goods, that they caſually came to their Teſtator's Hands, who converted them to his own Uſe, and avers, that the Executors had Aſſets; they pleaded that they were Not guilty, and 'twas found for the Plaintiff; and moved in Arreſt of Judgment, that *Non culp.* by them was no Iſſue, becauſe the Plaintiff in his Declaration had alledged no Offence or Tort in the Executors, but in the Teſtator for the converting the Goods to his own Uſe; therefore for the Executors to plead *Non culp.* in whom Tort was ſuppoſed, did make no Iſſue; and for this Cauſe Judgment was ſtaid. *Savil* 13.

Fourthly, Of the Declaration.

1. Where Trover is brought for ſeveral Things, and the Declaration deſcribes one or more of the Things by a *Latin* Word that is inſenſible, the Plaintiff may take his Damages, as to thoſe Things that are well deſcrib'd, and releaſe them as to thoſe Things that are ill deſcribed. 3 *Salk.* 366. *Benbrigg* v. *Day.*

2. In Trover, the Plaintiff declared for ten Pair of Curtains and Vallance; it is good without ſhewing the Kind and *Quantum* of the Stuff, and

ſo 'tis of ſuch artificial Things; but Trover for Planks, unleſs the Plaintiff ſets forth how many, is not good; but for Planks in his Granary, or for Books in his Study, is good. 3 *Salk.* 366.

3. The Plaintiff declared for two hundred Ounces of Plate by the *Latin* Word *Argenti* (*anglice* Plate); and it was held well enough. *Campbell* v. *St. John*, *Comb.* 306. *Salk.* 219.

4. In Trover againſt Husband and Wife, the Plaintiff cannot declare of a Converſion by the Husband and Wife, to the Uſe of the Wife, nor to the Uſe of the Husband and Wife: But he may declare of a Converſion by the Husband and Wife, to the Uſe of the Husband, or that the Wife converted the Goods to the Uſe of a Stranger. 3 *Salk.* 365. *Anonymus.*

5. A Declaration in Trover for twenty Ounces of Cloves, and held ill; though it is not ſhewn how much of each, or that they were mix'd. *Salk.* 654. *Hartford* v. *Jones.*

6. Where a Declaration was for converting ten Trees, calling them *decem Arbores*, though the Exception was, that *Arbor dum creſcit lignum dum creſcere neſcit*; yet *Rolle* Chief Juſtice ſaid, they were well enough expreſs'd. *Stile* 235. *Popham* v. *White.*

7. In Trover, if the Plaintiff alledges no Place, although it be found for the Plaintiff upon the General Iſſue; yet the Plaintiff can't have Judgment. 2 *Roll's Rep.* 66. *Anonymus.*

8. In deſcribing the goods converted, when the Proceedings were in *Latin*, it was the *Latin* Word which the Court were to take Notice of; and if more was in the *Anglice*, than the *Latin* Word would bear, it is void; as that which is ſo mention'd above what the *Latin* Word will it ſelf deſcribe. 2 *Roll's Rep.* 255. 2 *Cro.* 664.

9. Where the Declaration was, *de tribus ponderibus lanæ ad valentiam octoginta ſolidorum*, Judgment was ſtaid for the Incertainty; for *Pondus* ſignifies every manner of Weight. 2 *Roll's Rep.* 369. *Lawrence* v. *Turner.*

10. In Trover for a dead Thing, there ought to be added the Value, and the Price if it be alive. 2 *Cro.* 136. But if no Value be mention'd in the Declaration, it is good after a Verdict. 653, 654. *Bradford* v. *Ramſey.*

11. An Adminiſtrator, to whom Adminiſtration is committed by a Peculiar; if he doth not ſet forth in his Declaration, that he was *loci illius ordinarius*, ſhall, notwithſtanding he has omitted it, have Judgment after a Verdict. 1 *Cro. Lacy* v. *Smith.*

12. In Trover and Converſion, no other Place is to be expreſſed in the Declaration, but that only where the Goods came to the Defendant's Hands. 1 *Bulſt* 206. *Atkins* v. *Wheeler.*

13. *Coke* ſaid, It was adjudged in an Action of Trover and Converſion, the Converſion is traverſable; for it is the Subſtance of the Action, and the Tort ſuppoſed in him, and ſo may well be traverſed: For if one finds Goods, but doth not convert them, no Action lieth. As the Caſe was in a Trover and Converſion of Goods. The Defendant ſaith he took them Damage-feaſant, and impounded them, *abſque hoc*, that he converted them to his Uſe. And in *Leak's* Caſe it was adjudged, That the Place and Time of Converſion are to be alledged, for they are material; and for that they were not alledged, the Bill was abated after a Verdict. 1 *Cro.* 97. *Stranſham's* Caſe. *S. Point.* 1 *Cro.* 78. *Hubbard's* Caſe. But the Want of a Place is aided, if the Defendant plead a Special Plea; as Sale in Market-Overt, after a Verdict, and by the Statute; becauſe the *Venue* is in the Plea. *Goldſ. Rep.* 54. and 89.

14. An Exception was taken to a Declaration in Trover, that the Plaintiff did not ſay he was poſſeſſed of the Things *ut de bonis ſuis propriis*. But the Plaintiff had Judgment. See *Moore* 691. *Maynard* v. *Battell.*

15. 'Twas moved in Arreſt of Judgment, on the Return of the Writ of Inquiry, That the Time of the Converſion was not alledged; and the Declaration for that Cauſe was held naught by two Judges. 1 *Brownl.* 8.

16. An Action of Trover of Goods was brought, ſuppoſing the 3d of *May*, 14 *Jac.* he was poſſeſſed of the Goods, and the ſame Day loſt them; and that the 4th of *May*, *Anno* 14. *ſupradict.* they came to the Defendant's Hands by Trover; and that *poſtea, viz. primo Maii anno ſupradict.* he converted them: And it was found for the Plaintiff; and now moved in Arreſt of Judgment, That the Declaration is not good; for the Converſion is alledged before Trover, which cannot be; and therefore void: *Sed non allocatur*; but it was adjudged, That *poſtea Convertit*, is ſufficient, and the *ſcilicet* is void. And a Precedent was then ſhewn in an *Ejectione firmæ*, where the Ejectment was alledged, That *poſtea ſcilicet*, ſuch a Day, which was before the Leaſe; and it was found for the Plaintiff; for the *ſcilicet* being repugnant is void; and the *poſtea Eject.* was held good enough. Whereupon it was adjudged for the Plaintiff. 2 *Cro.* 428. *Teſmond* v. *Johnſon*. *Quære tamen*; for in *Telv. p.* 98. *Wilbore* v. *Coggan*, in *Aſſumpſit*, the Judgment was for this Exception ſtaid.

17. Error was brought of a Judgment in the King's Bench: For that the Bill, in an Action of Trover, was of 400 Buſhels of Pippins, the Declaration was forty Buſhels; and Judgment being given upon *nil dicit*, the Writ of Inquiry recites the Trover and Converſion of 400 Buſhels. And thereupon Damages found to 40 *l.* and Judgment accordingly. And Errors aſſigned, becauſe the Writ of Inquiry of Damages varied from the Declaration upon the Record; there being more in the Writ than in the Record upon which the Judgment was entred. The Defendant hereupon alledged Diminution, and procured the Bill upon the File to be certified; and then pleaded *In nullo eſt Erratum.* And all the Juſtices and Barons held, That it was Error; for the Bill doth not warrant the Declaration; and the Judges ought to be warranted by the Declaration on the Record, and if it be variant from it, it is Error; and they ſaid, That it could not be amended; for it is the Record to which the Party was to plead: Wherefore a Rule was given for the Reverſal of the Judgment; but afterward ſtaid upon a Surmiſe, that the Record it ſelf was miſcertified. 2 *Cro.* 294. *Cleydon* v. *Taylor.*

18. In an Action of Trover and Converſion; after a Verdict for the Plaintiff, it was moved in Arreſt of Judgment, That the Action was commenced in *Hillary*-Term, and the Converſion alledged to be on the third Day of *February* in the ſame Term; and the Bill filed relates to the firſt Day of the Term, ſo before the Cauſe of Action.

But it was reſolved by the Court, That if the Bail was entred after the third Day of *February*, it is well enough; for it is that which gives this Court Juriſdiction.

So an Ejectment may be brought upon a Leaſe made in the ſame Term: So the Statute of Limitation may be pleaded to an Action, if the Time be elapſed before the Day wherein the Bail is filed, tho' not before the firſt Day of the Term, wherein the Action is brought; for the Action ſhall not be ſaid to be depending until the Bail is filed. And upon Search it was found, That the Bail was filed the laſt Day of the Term. 1 *Ven.* 135. See 2 *Roll. Rep.* 475. *Lea* v. *Narſh.* 2 *Lev.* 13, & 176. 2 *Syd.* 373. *Lideot* v. *Backwell.*

19. To an Action of Trover of divers Goods (naming them particularly) and converting of them, the Defendant pleaded Not guilty, and found againſt him, and Damages aſſeſſed to 40 *l.* And it was now moved in Arreſt of Judgment, Firſt, That the Action is brought of divers Things by an Adminiſtrator of Goods of the Inteſtate's found and converted: And it appears that Parcel of thoſe Goods are Things fixed to the Freehold, and as Parcel thereof, for which this Action lies not; and divers Parcels of them are inſenſibly alledged, and there be not any ſuch

Words in *Latin* or otherwiſe for them; and the Damages being intire, there ought not to be any Judgment: For the Declaration is, That he was poſſeſſed *de duobus Articlis, vocat.* Portal *cum ſuſpenſis, vocat.* Hinges; and *de uno Molendino, vocat.* an Hand-mill; and *de uno Plumbeo, vocat.* a Lead; and *de una Alveola, vocat.* a Waſhing-fat, and loſt them, *&c.* which Things appear to be fixed to the Houſe, and are as Parcel thereof, and to be accounted as Goods; ſo the Action lies not for them: For the Portal is a Door to the Houſe, and the Hand-mill and the Lead, (which is a Brewing Lead) and the Waſhing-fat, (which is Parcel of the Brewing Veſſels) are always fixed Things, and go to the Heir, and not to the Executors, as 20 *H.* 7. is. *Sed non allocatur*; for 'tis alledged in the Declaration, That he was poſſeſſed of them *ut de bonis propriis.* And it may be theſe Things were ſevered from the Freehold, and Things lying by; and it ſhall be ſo intended when the Plaintiff ſo declares, and the Contrary appears not to the Court by any Matter ſhewn unto them by the Defendant's Plea. Secondly, For that he declares, *De Quatuor ollis æriis, vocat.* Braſs-pots, where it ought to be *Ollis aheneis*; for there is not ſuch a Word as *Æriis. Sed non allocatur*; for when it is added, *vocat.* Braſs-pots, that is as much as to ſay, *Anglice*, Braſs-pots, which the Court knows was intended; which altho' it be not in congruous *Latin*, or in apt Words for it; yet it is good enough, and of ſuch Nature were divers other Things in the Declaration; but they had all one Anſwer. Thirdly, Becauſe he declares, That he was poſſeſſed *de uno Spadone, una equa pretii* 53 *s.* 4 *d.* So there is not any Price at all for the Gelding; and for that Cauſe *Popham* and *Telverton* held the Declaration to be ill; for to every Thing there ought to be added the Value, if it be a dead Thing, and the Price, if it be alive: And foraſmuch as this wanted thereof, they held it to be vicious. But *Williams, Tanfield* and *Fenner, econtra*; for they ſaid it was not of Neceſſity, eſpecially where the Thing is not demanded, but Damages for it. And therefore *Williams* cited the Regiſter, *fo.* 37. That ſuch Exception at the Common Law was not material. But they held, That at the moſt it was but Default of Form, which is aided by the Statute of 18 *Eliz.* But the other Juſtices denied it, and ſaid, It was Subſtance, and not Form only. But afterwards upon viewing the Roll in Court, altho' the Record of *Niſi Prius* was ſo, yet the Roll is *de uno Spadone & una Equa pretii* 53 *s.* 4 *d.* ſo the Price extends to both: Wherefore they held it all to be good enough. Wherefore they awarded the Record of *Niſi Prius* ſhould be amended according to the Roll; and it was adjudg'd for the Plaintiff. *Note*; There was a Precedent cited, *Trin.* 24. *Eliz. Rot.* 723. That for wanting *vi & armis*, in Treſpaſs, it was reſolved to be but Form and not Subſtance, and aided by 18 *Eliz. Noy* 115. 2 *Cro.* 129. *Wood* v. *Smith.*

20. The Value of the Goods in Trover need not be preciſely alledged; *aliter* in Detinue: The Reaſon of the Diverſity is, becauſe in Detinue, the Things themſelves, or the Value of them, is to be recovered; but in Trover only Damages. Adjudged on Writ of Error. 2 *Roll. Rep. Goodwin* v. *Harwood.*

21. A Writ of Error was brought to reverſe a Judgment, given by Default in the Common Pleas, in an Action of Trover and Converſion, and the Error aſſigned was, that The Plaintiff had declared for two Pieces of Cloth, and did not expreſs whether they were linen or woollen Cloth; but the Exception was over-ruled, and the Judgment affirmed. *Niſi, &c. Stile* 419. *Iles* and *Winſor.*

22. It was moved in Arreſt of Judgment, That the Plaintiff had declared of the Trover and Converſion of a certain Number expreſſed in the Declaration of Pieces *panni lanei, anglice*, of red, yellow and black Cloth; which is incertain, and cannot be uſed as it here, to expreſs Cloth of divers Colours; for *panni lanei* ſignifies only woollen Cloth. But

Barn, Juſtice, ſaid, All is but woollen Cloth, though they be of divers Colours, and therefore it is good enough. *Hodſden*, the Secondary, ſaid, Sometimes the Colours are uſed to be expreſſed, and ſometimes not. *Bacon*, It is better to expreſs the Colours than not; yet it is good enough without the expreſſing of them. Therefore let the Plaintiff take his Judgment. *Stile* 75.

23. An Action of Trover and Converſion, for that the Plaintiff, 9 *Martii* 18 *Jac. apud Chelmsford*, was poſſeſſed of a Writing obligatory, wherein *John Petchy* and *Thomas Petchy*, were obliged to the Plaintiff in 60 *l.* ſealed with the Seals of the ſaid *John Petchy* and *Thomas Petchy*, *Ut de ſcripto ſuo obligatorio proprio, & ſic poſſeſſionatus*, 12 *Martii*, 18 *Jac.* loſt it. And that upon the 13 *Martii*, 18 *Jac.* at *Chelmsford*, it came to the Defendant's Hands by Trover: And that the Defandant 20 *Martii*, 18 *Jac.* at *Chelmsford* aforeſaid, converted it to his own Uſe. Upon this Declaration, the Defendant demurred in Law, becauſe the Date of the Bond is not mentioned; nor that it was deliver'd as their Deed; but without much Argument it was adjudged for the Plaintiff; for he needs not ſhow the Date, becauſe it is loſt, and the Defendant hath eſloined it. And he is not to recover the Debt, but Damages. Therefore Secondly, the Allegation that it was *ſcriptum obligatorium*, wherein they were obliged, hath Intendment ſufficient that they delivered it as their Deed. Wherefore, *&c.* 2 *Cro.* 637. *Upchard* v. *Tatam.*

24. Error of a Judgment in the Common Bench. Upon Trover and Converſion of a Bond of 100 *l.* conditioned for the Payment of 50 *l.* at ſuch a Day; which came to the Defendant's Hands, and he being required ſuch a Day and Year to deliver it, had not delivered it, but refuſed and converted it to his own Uſe, (but no Day, Year, or Place of this Converſion mentioned) The Defendant pleaded Not guilty, and found againſt him, and Judgment for the Plaintiff. The firſt Error aſſign'd by *Grimſton* was, becauſe the Date of the Bond is not mentioned; *ſed non allocatur*; for being loſt and converted, he peradventure did not know the certain Date of the Bond, and if he ſhould recite a Date, and miſrecite it, it would be a Failer of his Suit. The ſecond Error, becauſe he did not alledge the Day nor Place of the Converſion; *ſed non allocatur*; for the Denying to deliver upon Requeſt is a Converſion; and the Day, Year, and Place are thereby alledged; which is ſufficient: And the Allegation of the Converſion (which hath no Day, nor Place) is not material, when there was a ſufficient Converſion before; whereupon the Judgment was affirmed. 2 *Cro.* 262. *Wilſon* v. *Chambers.*

25. In Trover and Converſion for a Mare.

Upon Not guilty pleaded, and a Verdict for the Plaintiff, it was moved in Arreſt of Judgment, That the Mare was laid *ad valentiam*, and it ſhould have been *pretii*. *Sed non allocatur* after Verdict. (2 *Cro.* 207. *Stile* 174, 182, 2.)

The Plaintiff declares, That he was poſſeſſed *de quadam equa ut de catallis ſuis propriis*, and that *catalla pred. caſualiter perdidit*, and that coming to the Defendant's Hands, he converted *catalla prædict.* to his own Uſe; ſo that there is no expreſs Converſion of the Mare.

The Court ſaid, That the Declaration was inartificial, but good after Verdict; for *Catalla prædict.* muſt refer to the Mare; for nothing elſe is mentioned before. 2 *Ven.* 174.

So is *Bona & Catalla prædict'*, tho' there was only a Waſtcoat mentioned, good on general Demurrer, tho' perhaps 'twould be ill on a ſpecial one. See *Lutw.* 1537. *Allen* v. *Harris.*

26. In an Action of Trover for divers Things, *& inter alia de ſex Catulis quatuor Catellis & una Amphora ſaporis*, after Verdict for the Plaintiff, 'twas moved in Arreſt of Judgment, That *Catulis* ſignifies Whelps, *Catellis* little Whelps of any kind, and that *ſaporis* ſignifies Savour for which no Action lay; but the Court gave Judgment for the Plaintiff, and ſaid, they would intend the Whelps were Dogs Whelps, and that no Damages

were given but for the *Amphora*. 3 *Lev.* 336. *Chambers* v. *Warkhouſe*. *Sed quære*; for this Caſe does not ſeem to be Law. *Vide* the following Caſes.

27. Trover *de duabus Centenis plumbi uræ*, *anglice*, two hundred Weight of Lead Ore.

It was objected, That *Centena* ſignifies an Hundred in a County, and 'tis uncertain therefore what is underſtood by it; but the Court ſaid it was good with the *Anglice*, and to be underſtood by the ſubject Matter. Trover *de duobus ponderibus Caſei*, *Anglice*, two Weighs of Cheeſe, hath been held good; ſo *de duobus oneribus Cupri*, *Anglice*, two Horſe-Loads of Copper. 1 *Ven.* 211.

28. In Trover and Converſion for divers Parcels of Houſholdſtuff, an Exception was taken to the Declaration, becauſe the Plaintiff, amongſt other Things, had declared *pro ſex parcellis plumbi Anerii*, *anglice*, Pewter Porringers: Whereas the Word *Parcellis* is uncertain; for a Parcel doth conſiſt of many Things in Number, and ſo *ſex parcellis* cannot properly be applied to ſix Porringers; but if it had been *ſex peciis*, it had been better, tho' that be alſo incertain. *Hale* held it was all one as if it had been *pro ſex peciis plumbi Cinerii*. *Rolle*, Chief Juſtice, inclined it was well enough, becauſe though the Words are not ſo proper, yet the Deſcription is good enough. *Jerman*, Juſtice, was of the ſame Opinion. But *Nicholas*, Juſtice, That the *Latin* is not good; for if there be proper Words for a Thing, they ought to be uſed, otherwiſe Barbariſm will be introduced; and Circumlocutions ought not to be uſed where there is a proper *Latin* Word to be had to expreſs a Thing. *Ask*, Juſtice, agreed with *Rolle* the Chief Juſtice, and the Plaintiff was bid take his Judgment, except better Matter were ſhewn to the contrary. *Stile* 199. *Graves* v. *Drake*.

29. In an Action of Trover and Converſion the Plaintiff had a Verdict; the Defendant moved in Arreſt of Judgment, and took theſe Exceptions to the Declaration: Firſt, The Plaintiff declares *pro tribus duodenis fili*, *Anglice*, Dozens of Thread; which is uncertain; for it may be three Dozen Pounds of Tread, or Skenes of Thread, or Ounces of Thread. To this it was anſwered, That it cannot be otherwiſe expreſſed, and the Word Dozens of Thread is uſed amongſt Merchants, and well known unto them what is meant by them. Secondly, He declares for ſo many Pounds of Muſcat, inſtead of *nucum Muſcatarum*, *anglice* Nutmegs. But this Exception was miſtaken, for the Record was otherwiſe; and beſides, it was with an *Anglice*, which makes it certain. The Court ruled Judgment to be entred, except Cauſe ſhewed for the Plaintiff. *Stile* 80. *William* v. *Tyrer*.

30. In an Action of Trover and Converſion, and a Verdict for the Plaintiff, it was moved in Arreſt of Judgment, That the Plaintiff did declare for Books and for Stockings found and converted, and doth not ſhew what Books, *viz.* whether *Engliſh* or *Latin*, or in what other Language; nor, whether Law-Books, Divinity, Phyſick, or any other Subject; and becauſe he did not declare what Sort of Stockings they were, whether Woollen, Worſted or Silk, *&c.* But the Court over-ruled the Exceptions; and ſaid, That Books were not Things of divers Species, be they of what Language or Subject ſoever: Neither the Stockings; for were they Silk, or Woollen, or Worſted, they were but Stockings; and ſo ruled Judgment to be entred. *Stile* 25. See 1 *Bulſt.* 126.

31. An Action of Trover and Converſion of divers Goods, *& inter alia de uno Riſco*, *Anglice*, a Trunk full of Fine Linen, *ad valentiam* 20 *l.* *& de una Pixide*, *Anglice*, a Box full of Bands, Cuffs and Shirts, *ad valentiam* 10 *l.* and of divers Parcels of other Goods. The Defendant pleaded Not guilty, and Verdict found againſt him, and entire Damages aſſeſſed to 80 *l.* And it was moved in Arreſt of Judgment, That this Declaration is not good; for *Riſcus* is but a Trunk only, and *Anglice*, full of fine Linen, is uncertain; and Damages were given upon that Uncertainty. And

it was ſaid, That this Caſe differs from *Osbourn* and *Middleton*'s Caſe. *Co. l.* 10. *f.* 130. For there *Fulcrum lecti* may be conſtrued and underſtood of all that appertains to the Furniture of a Bed; but *Riſcus*, with an *Anglice*, full of Linen, cannot be intended to be underſtood, and referred to Linen; and if it ſhould be referred, 'tis uncertain; and if it ſhould not be referred to Linen, it was never intended that 20 *l.* ſhould be for the Value of the Trunk; and therefore it is not good, as *Playter*'s Caſe. *Co.* 5. *fo.* 34. *Treſpaſs, Quare Piſces ſuos cepit*, is not good for the Incertainty. And of that Opinion was *Houghton*; for if he had ſaid, *de Riſco, Anglice*, a Trunk full of Gold to the Value of 5000 *l.* and Damages had been given accordingly; none will ſay, That it was for the Trunk only, but the Gold therein; which had not been good for the Incertainty. But *Lea*, *Doderidge* and *Chamberlain*, held it to be good, and that Damages ſhould be intended to be given for the Trunk only; wherefore it was adjudged for the Plaintiff. *Note*; a Writ of Error was brought of this Judgment; and this Judgment affirmed. 2 *Cro.* 664. *Bancroft* v. *Coo.*

But 2 *Roll's Rep. p.* 254. *Bancroft*'s Caſe, 'tis doubted, Whether *un. Riſcus, Anglice*, a Trunk full of Linen, *una Pixis, Anglice*, a Box full of Linen, were good.

32. In an Action of Trover and Converſion *de decem paribus velorum & tegularum, Anglice*, Curtains and Vallance: 'Twas moved in Arreſt of Judgment, That the Declaration was uncertain, becauſe it did not appear how many there were of the one, or how many of the other, nor what was meant by a Pair; but Judgment was given for the Plaintiff, contrary to the Opinion of *Twiſden*, who relied upon the preceding Caſe. 2 *Syd.* 445. *Taylor* v. *Wells. S. C.* 2 *Saund.* 74. And with this Opinion agrees the Judgment in the Caſe of *Feeke* and *Ward.* 1 *Syd.* 174. But in 1 *Vent.* 71. *Anonymus*, which ſeems to be the Report of the above-mentioned Caſe of *Taylor* and *Wells*, 'tis ſaid, 'twas adjudged to be ill. *Ideo Quære.*

33. In Trover of Goods. The Defendant pleaded Not guilty, and found againſt him; and it was now moved in Arreſt of Judgment to be an ill Declaration; for he counts that he was poſſeſſed of ſuch Goods, ſhewing what they were *in Specie cum aliis Implementis ad valentiam* 3 *l.* but expreſſeth not what they were; and that he was poſſeſſed of other Parcels (particularly declaring what) *cum aliis Neceſſariis*; but mentions not what they were; and that he was poſſeſſed *de ſuibus*, but doth not ſet forth their Number. The Defendant, by Verdict, was found guilty of all contained in the Declaration, and Damages intirely aſſeſſed for all, which being ſo incertain, the Court cannot give Judgment for thoſe Parcels which are incertain. And of that Opinion was the whole Court for the Incertainty in the Declaration. But *Gawdy* held, That in Regard the Defendant had admitted it, he cannot now after a Verdict take Advantage thereof. As 20 *Aſſ.* 3 is. But the other Juſtices *econtra.* Becauſe here is not any Certainty at all, *pro Implementis & Neceſſariis:* But there is a reaſonable Certainty, altho' upon Demurrer; becauſe 'tis not altogether certain, Judgment ſhall be againſt the Incertainty; yet after Verdict he ſhall take no Advantage if there be any convenient Certainty; but here is not any Certainty. Wherefore it was adjudged for the Defendant. 1 *Cro.* 817. *Wood* v. *Smith.*

34. The Plaintiff declared in Trover for ſeveral Things, *& aliis Utenſiliis, Anglice*, Implements, and obtained a Verdict; but the Damages being intire, Judgment was ſtaid, becauſe of the Incertainty of the Expreſſion, *aliis Utenſiliis quot quanta & qualia.* 3 *Lev.* 18. *Blackhouſe* v. *Moore.*

35. Trover for two Pair of Pot-hooks, *&c.* and Hangers, *&c.* After Not guilty pleaded, and a Verdict for the Plaintiff, *Allen* moved in Arreſt of Judgment, That Hangers is a too incertain and equivocal Word. *Baldwin*, for the Plaintiff, inſiſted upon it, That ſince Pot-hooks preceded the Word Hangers, the Court could not intend theſe were any other Hangers, than ſuch on which Pot-hooks uſed to hang. And he cited a Caſe

a Caſe of Trover for a Billiard-Table, Port, Sticks and Balls, and adjudged good, becauſe the Port, Sticks and Balls, ſhould be intended Things appurtenant to the Table. But the Court was of Opinion, That it was too incertain a Word; for the Word does not immediately follow the Word Pot-hooks, but there are divers other Things mentioned between; therefore Judgment was ſtaid. *Raym.* 2. *Seaman* v. *Barnes.*

36. Exception to an Action of the Caſe brought, and the Plaintiff declares, That whereas the Plaintiff had delivered the Defendant *unum Statum ſalis*, *Anglice*, a Buſhel of Salt, pretending that (*Statum*) had another proper Signification; but becauſe it was ſhewed to the Court, that (*Statum*) by one Dictionary, was *Latin* for a Buſhel, Judgment was given for the Plaintiff. 1 *Brownl.* 16.

37. In a Writ of Error upon a Judgment in the Common Bench, in an Action of Trover, where Judgment was given for the Plaintiff, Error was aſſigned in the Declaration, which was, becauſe it was *de decem Juvencis*, *Anglice*, Bullocks and Heifers, and did not ſay how many of the one, and of the other.

But it was anſwered, That the *Latin* Word being proper, and of known Signification, the *Anglice* was void, according to *Osbourn*'s Caſe, 10 *Co.* But the Court reverſed the Judgment, and cited the Caſe before in this Court, Trover *de viginti ovibus matricibus & agnis*; and it was reſolved to be naught, for not aſcertaining the Number of each. But *Twiſden* ſaid, There was a Trover brought *de viginti averiis*, viz. *Bobus*, *agnis*, *&c.* and *viginti* was applied to each *Species*, and held well. It was offered in this Caſe to diſtinguiſh it from the Caſe *de ovibus matricibus & agnis*, that there the *Latin* was of two Sorts; *ſed non allocatur*; for the Words here being equivocal, it was all one. 1 *Ven.* 317. *Davis* v. *Price.*

Other Caſes where the Declarations have been held good and ſufficient, and where not.

1 *Ven.* 71. *Anonymus.*
1 *Ven.* 135. *Anonymus.*
2 *Ven.* 63. *Bleſs* v. *Froſt.*
174. *Anonymus.*
3 *Cro.* 525. *Whyte* v. *Hanby.*
2 *Keb.* 188. *Bird* v. *Watſon.*
2 *Keb.* 640. *Taylor* v. *Wells.*
681. *Kemon* v. *Wells.*
743. *Thomſon* v. *Cuſtis.*
753. *Elſique* v. *Acton.*
3 *Keb.* 14. *Dennis* v. *Turbel.*
3 *Keb.* 153. *Niller* v. *Green.*
3 *Keb.* 209. *Eſto* v. *Brown.*
253. *Hancock* v. *Hodges.*
693. *Price* v. *Davis.*
—— *Dobſon* v. *Bell.*
1 *Cro.* 865. *Gramvil* v. *Rebotham.*
4 *Mod.* 156. *Cook* v. *Bolinger.*
Stile 136. *Heyford* v. *Hobſon.*
3 *Cro.* 545. *Lyſter* v. *Home.*
Dyer 306. *Fines* v. *Spencer.*
7 *Co.* *f.* 17.
Stile 264. *Sawyer* v. *Ruſſell.*
1 *Brownlow* 16.

Stile 69.
194. 358. } *Heath* v. *Udall.*
2 *Lev.* 85. *Miller* v. *Green.*
11. *Coleman* and others v. *Bard* and *Nelmes.*
Stile 31. *Segar* v. *Dyer.*
2 *Syd.* 60. *Ellis* v. *Yarrow.*
1 *Lev.* 48.
Stile 483. *Clark* v. *Fitzwilliam.*
2 *Lev.* 177. *Dunwell* v. *Bullock.*
1 *Lev.* 99. *Mayhow* v. *Flower.*
2 *Roll's Rep.* 369. *Lawrence* v. *Turner.*
3 *Lev.* 18. *Blackhouſe* v. *Moore.*
1 *Cro.* 818. *Draycott* v. *Piott.*
1 *Mod.* 289. 1 *Lev.* 301. } *Wood* v. *Davis.*
1 *Ven.* 17.
Stile 232, 235. *Popham* v. *White.*
360. *Webb* v. *Waſhburne.*
2 *Cro.* 307. *Cliſon* v. *Procter.*
6 *Co.* *f.* 14. Arundell's Caſe.
Stile 25. 1 *Bul.* 126.
224. *Ernely* v. *Allen.*

Fifthly, **Of the Plea.**

1. In an Action of Trover for Jewels, it was ſaid by *Twiſden*, There is no Plea in Trover, but a Releaſe, or Not guilty; every Special Plea in Juſtification being but Tantamount to it. 1 *Keb.* 805. *Devoe* v. Dr. *Coridon.*

2. So has it been ſaid by the Chief Juſtice *Holt*, that there is no proper Plea in this Action but the General Iſſue; and he likewiſe ſaid in the Caſe of *Hartford* v. *Jones*, That the Plea there mention'd, is the only good Special Plea Extant in the Books. But in Order the better to underſtand this Matter, it is to be obſerved,

1. That no Plea or Juſtification is good, which amounts only to the General Iſſue.
2. That where a Man juſtifies, he muſt confeſs or avoid the Converſion.
3. That where the Converſion is traverſed, it muſt be traverſed aptly and materially, and not to any ſuperfluous Matter in the Plaintiff's Declaration.
4. That in ſome Caſes the Converſion, and in ſome the Plaintiff's Property, and in others the Time and Place is to be traverſed.
5. That a Recovery in Treſpaſs is a good Bar to an Action of Trover.
6. That a Recovery againſt one Defendant, is a good Bar for another Defendant to plead.
7. That this Action of Trover, is within the Statute of Limitations.

To illuſtrate which, and ſeveral other Particulars, ſee the following Caſes.

3. In Trover and Converſion, the Defendant may plead Not guilty, and give in Evidence, that he diſtrained them till he was paid; but cannot plead ſpecially that he took the Goods by Diſtreſs, or that he detained them as the Horſes of his Hoſt, till he paid for the Horſes ſtanding; but if he pleads a Matter which confeſſes the Converſion, and avoids it, as in the Caſe of *Yelverton* 198. 'tis good by *Holt*. Chief Juſtice. 3 *Salk.* 365. 2 *Salk.* 654.

4. In Trover for one hundred Sheep, the Defendant juſtified under a *Fieri facias*, by Virtue whereof he took them in Execution; and it was adjudged upon a Demurrer that this Plea was ill, becauſe it doth not anſwer to the Converſion, and he ſhould have pleaded Not guilty, and given this Matter in Evidence. 3 *Salk.* 365.

5. In the Caſe of *Put* and *Hardy* in *Raymond* 472. 3 *Mod.* 11. It was adjudged, that a Judgment for a Defendant in Treſpaſs was not pleadable in Bar to an Action of Trover for the ſame Goods; but that is not Law, as it is ſaid by *Holt* Chief Juſtice, *and may be ſeen hereafter.* *Comb.* 376. *Feilding* v. *Senat.*

6. 'Tis not a good Plea in Bar for the Defendant to ſay, that the Plaintiff and another were Joint-Merchants, and jointly poſſeſſed of the Ship and Goods; and that one was dead, and had made an Executor, for at moſt it is but in Abatement. 3 *Lev.* 290. *Kemp* v. *Andrews. Show.* 188.

7. A Releaſe pleaded by one of three Defendants to an Action of Trover operates to diſcharge the Reſt. 4 *Mod.* 379. *Kiffin* v. *Willis.*

8. A ſpecial Plea in Trover was held ill, becauſe it did not confeſs and avoid, nor traverſe the Plaintiff's Title to the Goods alledged in the Declaration, but only gives the Plaintiff a colourable Poſſeſſion, without Right or Property, and a Diverſity was there taken between this Action and an Action of Treſpaſs, *Quare vi & armis*; for in Treſpaſs, Colour of Poſſeſſion given by the Defendant to the Plaintiff is ſufficient, becauſe the Declaration is General, upon a Suppoſal without any certain Title; and therefore it is ſufficient to anſwer a Suppoſal of a Title with a Colour

of Poſſeſſion only; but in an Action of Trover, and in all other Actions, where the Plaintiff makes a Title to the Thing demanded, or to a Thing for which he demands Damages, there it behoves the Defendant to make a better Title to himſelf, and to traverſe the Plaintiff's Title, or otherwiſe to confeſs and avoid it; as in 4 *Jac.* 1. It was adjudged in an Action of Trover for Goods, where the Defendant made a Title to them Paramount, and that he bail'd them to the Plaintiff to keep, by which the Plaintiff became poſſeſſed, and that the Defendant (as he well might) took them as his own Goods. It was therefore adjudged no Plea, becauſe he anſwers the Plaintiff's Title only with a Colour of Poſſeſſion. *Yelv.* 173. *Preiſtly* v. *White*.

9. The Defendant may juſtifie the Trover at the Place in the Declaration, and the Converſion at another Place. 1 *Roll's Rep.* 1. *Hill* v. *Hawkins*.

10. If the Plea of the Defendant be, that he took the Corn in ſuch a Place, by Virtue of a Cuſtom for taking it for cleaning the Market-place, it has been held that it amounts to more than Not Guilty. 1 *Roll's Rep.* 1, 2, 45.

11. If the Action be for taking a Horſe, and the Defendant pleads that he is an Hoſtler, and it was put to him at Livery, and there died, it is no more than Not guilty. 1 *Roll's Rep.* 22. *Whitaker* v. *Collet*.

12. In an Action upon the Caſe, the Plaintiff declared for Corn, which came to the Hands of the Defendant, and that he converted it, and ſuppoſed the Coming to his Hands to be in *London*. The Defendant pleaded that he was ſeized of certain Lands, in *R.* in *Berks*, and that the Plaintiff did thereof diſſeiſe him, and ſowed the Lands; and before Severance he himſelf re-entred, and took away the Corn, as it was lawful for him to do, *abſque hoc*, that any Corn came to his Hands in *London*; and by the Opinion of the whole Court, the Traverſe was held to be good. 4 *Leon.* 202.

13. An Action of Trover for Goods was brought, and for converting them to his own Uſe in *Ipſwich*; the Defendant pleaded, that the Goods came to his Hands in *Dunwich*, in the ſame County, and that the Plaintiff gave to him all the Goods which came to his Hands in *Dunwich*, *abſque hoc*, that he is Guilty of any Trover or Converſion in *Ipſwich*; it was holden to be a good manner of Pleading, by Reaſon of the ſpecial Juſtification. *Vide* 27 *H.* 6. But where a Juſtification is general, the County is not traverſable at this Day. *Vide* 19 *H.* 6, 7. 4 *Leon.* 106.

14. If the Defendant pleads a Sale in Market overt, it is good, without giving Colour to the Plaintiff. 1 *Roll's Rep.* 273. *Biſſe* v. *Tyler*.

15. A Juſtification, if it is not local, but tranſitory, is not good, and amounts but to the General Iſſue. 1 *Roll's Rep.* 395. *Phillips* v. *Weeks*.

16. To plead the Cuſtom of *London* for buying Goods in a Shop, as in a Market overt, is not good, but muſt be given in Evidence on the General Iſſue. 1 *Roll's Rep.* 397. *Row* v. *Tompſon*. 2 *Cro.* 165. 1 *Cro.* 454. Other Caſes where a Sale in Market overt hath been held no Plea. *Godb.* 267. 1 *Roll's Rep.* 273. *Hetley* 49. 2 *Cro.* 165. *Owen* 27. 1 *Cro.* 485. *Moor* 624.

17. To an Action of Trover for divers Loads of Corn, the Defendant pleaded and intitled himſelf unto them as Tithes ſevered; and becauſe the Plea amounts but to Not guilty, the Plaintiff demurred, and ſhewed it for Cauſe, That the Plea was not therefore good; and without Argument it was adjudged for the Plaintiff. 3 *Cro.* 157. *Lynnet* v. *Wood*.

18. In an Action upon the Caſe for Trover and Converſion of Goods, the Defendant juſtified the Taking of them Damage-feaſant, *abſque hoc* that he converted them *aliter vel alio modo*; and it was thereupon demurred in Law; for that the Traverſe was not good, becauſe he confeſſed not any Converſion; the Plea alſo amounts to Not guilty. Wherefore without Argument it was adjudged for the Plaintiff. 1 *Cro.* 435. *Dee* v. *Bacon*.

19. In Trover and Converſion, ſuppoſing that the Defendant had ſold the Thing for which the Action was brought, *Non vendidit* was held no Plea, but the Defendant ought to have pleaded Not guilty. New *Benl.* 41 Lord *Mounteagle* v. the Counteſs of *Worceſter*. *S. C. Dyer* 121. *S. C.* 1 *And.* 20.

20. In Trover the Plaintiff ſuppoſed that he was poſſeſſed of divers Loads of Corn and Hay, at *H.* in the County of *M.* and that they came to the Hands of the Defendant by Trover, and that he converted them to his own Uſe. The Defendant pleaded, That before the Trover, he was ſeiſed of certain Lands in *Burton*, in the County of *Stafford*, in Fee, and the Corn and Hay was growing upon the Land, and he cut them as his proper Goods, and was poſſeſſed thereof till he loſt them; and they came to the Hands of the Plaintiff by Trover, and he loſt them again, and they came to the Hands of the Defendant, and he converted, as it was lawful for him to do. And upon this the Plaintiff demurred in Law; for that the Plea amounts only to the General Iſſue; and this Cauſe was ſhewn for Demurrer. And the Court held, That as this was ſhewn ſpecially for Cauſe of Demurrer, it was an ill Plea, and gave Judgment for the Plaintiff. 1 *Cro.* 146. *Ward* v. *Blunt*.

21. In Trover for ſix Oxen in *London*, and there converted, &c. The Defendant pleaded that he ſeiſed them in the Manor of *D.* in *Eſſex*, as Goods waived there, and ſo juſtified, *abſque hoc*, that he was guilty in *London*: And *per Cur'* it was no Plea; for it amounts but to the general Iſſue, containing no Matter local, to make the Place material. 1. *Cro.* 174. *Bullock* v. *Smith*.

22. In Trover and Converſion of twenty Sheep; the Defendant pleaded, That the Queen was, and yet is ſeiſed of the Manor of *Newport-Pagnel*, in the County of *Bucks*; and that *Malefactores ignoti* ſtole thoſe Sheep from the Plaintiff, and brought them within the ſaid Manor, and there waived them: Whereupon the Defendant, as Bailiff to the Queen of her ſaid Manor, ſeiſed them as the Queen's Goods to the Queen's Uſe, which is the ſame Trover and Converſion, and prays in Aid of the Queen. Whereupon the Plaintiff demurred ſpecially, &c. *Gawdy* and *Popham* held, That the Plea was not good; for that the Converſion was not anſwered: He alſo ought not to have Aid, becauſe it is but a Chattel; he hath not alledged, that he hath anſwered for them to the Queen; but that he needed not to have alledged any Purſuit of Felon. For *Popham* ſaid, It ought to be alledged that the Felon fled; or that he was in fear to be apprehended, and for that Cauſe waived them: For if a Felon carries away Goods, which he hath ſtole within a Manor, and leaves them there, and at another Time goes away, the Goods are not waived; for waiving ſhall be where he hath the Goods when he flies for Fear to be apprehended for them. And the Reaſon of the Forfeiture is, becauſe there was a Default in the Party robbed, that he did not purſue him to have taken the Goods from him, and therefore the Law gives them to the Queen. But it is not neceſſary, that he be purſued for the Felony, when he leaves the Goods, ſo that he flies for this Cauſe. But afterwards, becauſe the Plea was not in Bar, but concludes, *ſi Regina inconſulta*, &c. they all reſolved, That the Judgment could not be given as upon a Matter of Bar. And becauſe Aid was not grantable in this Caſe, it was awarded, That he ſhould anſwer without Aid. And ſo it was adjudged. 1 *Cro.* 693. *Foxley* v. *Anneſly*. 4 *Co.* 109. *S. C.* And *Moore Rep.* 572.

23. In Trover and Converſion of a Cow *apud Salop*. The Defendant pleaded, That the Queen was ſeiſed in Fee of ſuch a Manor, and demiſed it, and all Eſtrays therein, &c. to *J. S.* for Life, and conveys it by mean Conveyances to himſelf; and that this Cow came thither as an Eſtray; whereupon he ſeiſed her, and cauſed her to be proclaimed in two Market-Towns next adjoining. And the Plaintiff claimed a Property; and the Defendant demanding of him to pay for her Feeding, that he

refuſed, and thereupon he denied to deliver the Cow, and traverſes that he is Guilty of the Converſion, *apud Salop'*. And it was thereupon demurred, and held ill; becauſe he ſhewed not the Letters Patent; and becauſe he alledged not, that the Proclamations were made in the Pariſh-Church; and becauſe he traverſed the Will; and it was adjudged for the Plaintiff. 1 *Cro.* 716. *Brownlow* v. *Lambert.*

24. To an Action *ſur* Trover, the Defendant pleaded, that before the Time, wherein the Plaintiff ſuppoſes the Goods to come to the Defendant's Hands, one *S. A.* was poſſeſſed of them; and amongſt other Goods ſold them to the Defendant, but retained them in his own Hands, and afterwards ſold them to the Plaintiff, by Reaſon whereof the Plaintiff was poſſeſſed, and afterwards loſt them, and they came to the Defendant's Hands, who converted them *prout, &c.* Whereupon the Plaintiff demurred; and it was held by the Court to be an ill Plea; for it amounts to a Not guilty: And it was doubted whether the Court ſhould compel the Defendant to plead Not guilty, or award a Writ of Inquiry; But at laſt it was reſolved, that a Writ of Inquiry ſhould be awarded. 1. *Bro.* 5. 2 *Cro.* 319. *Auſtin* v. *Auſtin.*

25. To an Action upon the Caſe on Trover of 300 Sheep, the firſt of *December*, 36 *Eliz.* The Defendant pleaded, That he was Sheriff of the County of *Lincoln*, and that *J. S.* recovered againſt the Plaintiff 100 *l.* and thereupon had a *Fieri facias* to levy that Debt; which Writ was returnable *Craſtino Animarum*, 35 *Eliz.* That this was delivered to him, being then Sheriff of the ſaid County, upon the firſt of *October*, 35 *Eliz.* to be executed; that he, by Force thereof, upon the 20th of *October*, 35 *Eliz.* took the ſaid 300 Sheep, and ſold them upon the 22d Day of *October*, *anno* 35 *Eliz.* 100 and 4 Sheep for 40 *l.* Parcel of the ſaid 100 *l.* and that the other 192 Sheep remained in his ſaid Hands *pro defectu Emptorum.* And on the ſaid Day of *Craſtin. Anim.* he returned the ſaid Writ accordingly, and all this Matter. The which is the ſame Converſion, *abſque hoc*, that he converted *aliter vel alio modo*; and thereupon the Plaintiff demurred: And after Argument the whole Court held the Plea to be inſufficient. Firſt, and principally, Becauſe he doth not by his Plea confeſs any Converſion, and then the Traverſe is ill: But he ought upon this Matter to have pleaded Not guilty, and have given this Matter in Evidence. Secondly, Becauſe he ſuppoſes the Trover and Converſion to be on the firſt of *December*, 36 *Eliz.* and he juſtifies the Converſion in *October*, 35 *Eliz.* So he meets not with the Plaintiff in Time, and therefore he ought to have traverſed it; and the Traverſe *aliter vel alio modo*, ſhall never anſwer to the Time, but to the Manner of the Converſion. Thirdly, He makes not any Juſtification for four of the Sheep, but that he ſeiſed them; but did not ſhew what he did with them: Wherefore the Plea doth not anſwer all that which is compriſed in the Declaration; and for that Cauſe it was held ill in all. And of that Opinion was all the Court, and appointed Judgment to be entred for the Plaintiff; but after cauſed it to be ſtaid for the Equity of the Matter. 1 *Bro.* 4. *Aſcue* v. *Sanderſon.*

26. In Trover and Converſion of a Ship, and nine Pieces of the Plaintiffs declared, That the firſt of *March*, 21 *Jac.* he was poſſeſſed, and the ſame Day loſt them, which came to the Defendant's Hands, who 3 *Octob.* 3 *Car.* converted them to his own proper Uſe. The Defendant pleaded the Statute of 21 *Jac.* of Limitation of Actions; and that the 20th of *March*, 21 *Jac. cauſa actionis accrevit*; ſo as not only three Years, and more, are incurred ſince the Parliament, but alſo ſix Years after the Converſion, before any Action commenced. *Et hoc, &c.* The Plaintiffs replied, That they were poſſeſſed of the ſame Ship, as their proper Goods; and ſo being poſſeſſed before the 20th of *March*, 19 *Jac.* *viz.* 1 *Martii*, 19 *Jac.* they agreed at *London* aforeſaid, *in Parochia & Warda prædicta*, That the ſaid Defendant, as their Servant, ſhould tranſ-

port the ſaid Ship and Goods to *T.* in *Spain*, being Parts beyond Seas, and ſhould afterwards reſtore them unto the Plaintiff upon Requeſt; whereupon the Defendant taking the ſaid Ship, the ſaid 1 *Martii*, 9 *Jac.* tranſported her to the Parts beyond Seas, *viz.* to *T.* and 20 *Martii*, 19 *Jac.* there ſold the ſaid Ship and Goods to Perſons unknown, and converted them to his proper Uſe; and that the Defendant, after the ſaid Converſion, remained *in partibus tranſmarinis uſque primum Maii*, 1 *Car.* by Reaſon of which Stay, they could not ſue him *per Legem Terræ*; and that 1 *Maii*, 1 *Car. apud London*, they required him to redeliver the ſaid Ship and Goods, which he refuſed to do. But that he then and there converted and diſpoſed of the ſaid Goods. The firſt Queſtion was, whether this Action was within the Statute of Limitations; and it was held, that tho' Actions of Trover are not mentioned ſpecifically in the Statute, yet it is implied in the general Words of Actions upon the Caſe. The next Queſtion was, Admitting the Defendant was beyond Sea for ſix Years after the Converſion, and did not return into *England*; Whether the Plaintiff had not Liberty to bring the Action at any Time within ſix Years after his Return? For the *Proviſo* is on the Part of the Plaintiff, if he be over the Sea at the Time of the Cauſe of Action, that he ſhall have Time after his Return: And by the ſame Equity, it ſhall be ſo where the Defendant is over the Seas, and cannot be ſued. But that Point the Court did not reſolve. Thirdly, If this Requeſt, and not Delivery after his Return, be not a new Converſion, and Cauſe of Action; ſo that altho' he was barred before by the Statute of Limitation, whether he ſhall not hereby be reſtored to that Action. And *Jones* and *Whitlock* conceived, That he ſhould; and that he may be well intended, the Goods came to his Hands again after his Sale; and the Demanding them of him, and his Denial and Converſion, is good Cauſe of Action. But *Croke* doubted thereof. Fourthly, It was argued, That here the Replication was a Departure from the Declaration; for by the Declaration he ſuppoſeth a caſual Loſs, and a Trover by the Defendant, and that to be 21 *Jac.* But in the Replication he ſuppoſeth to Reſtore; and then a Sale of them the 20th of *March*, 19 *Jac.* ſo it varies in the Time and Manner how the Defendant had them; alſo by his own Confeſſion, the Converſion was made above ſix Years before the Action brought. But altho' *Croke* doubted therein, yet *Jones* and *Whitlock* overruled him, and gave Judgment for the Plaintiff, *abſente Richardſon*, Chief Juſtice. 3 *Cro.* 245, & 335. *Swayn & al'* v. *Stephens. S. C. W. Jones* 252.

27. In Trover the Defendant pleaded a Releaſe, &c. And it was held *per Holt*, Chief Juſtice, That in Treſpaſs, where the Defendant pleaded a Releaſe before the Time, he muſt alſo go on with an *abſque hoc*, that he is Guilty *ad aliquod tempus poſtea*: But if he does not vary the Time, there needs no Traverſe; for ſuppoſe you alledge the Treſpaſs ſuch a Day, and the Defendant juſtifies as to that Day, the Plaintiff may ſhew another Day, and it is no Departure, for the Defendant has occaſioned this; and there is a great Difference between a Bond and a Treſpaſs: If the Declaration lays the Bond to be dated on one Day, the Replication cannot ſay it was dated on another; but in Treſpaſs the Plaintiff may depart as Occaſion requires; *ſed adjournatur.* 1 *Salk.* 222. *Webley* v. *Ralmer.*

28. In an Action upon the Caſe upon a Trover and Converſion to his own Uſe, *per venditionem quibuſdam hominibus ignotis*; the Defendant pleaded, That the Goods were bailed to him, to bail to *J. S.* to whom he had deliver'd them, *abſque hoc*, that he did convert them to his own proper Uſe, *per venditionem hominibus ignotis.* The Traverſe was held ill; for the Converſion to his own Uſe, is the Cauſe and the Ground of the Action, and not the Selling the Goods, &c. 2 *Leon.* 13.

29. In Trover for an Horſe, and ſelling him, and converting the Money to his own Uſe. The Defendant confeſſed, that it was the Plaintiff's Horſe, and that one *J. Courtnal* found and delivered him to the Defendant to redeliver it upon Requeſt: Whereupon he redeliver'd him to the ſaid *J. C.* before the Action brought, *abſque hoc*, that he ſold and converted the Money to his own proper Uſe. The Court held, that as the Subſtance in this Caſe was the Converſion, it might well be traverſed; but as the Defendant had taken a Traverſe to the Converting the Money to his own Uſe, which was not materially alledged in the Declaration, but is ſuperfluous, and as the Defendant by his Traverſe hath made it Part of the Iſſue; the Traverſe therefore is ill in that Point; and the Demurrer being upon the Traverſe, it was adjudged for the Plaintiff. 1 *Cro.* 554. *Kynnerſley* v. *Barnard.*

30. In an Action upon the Caſe, the Plaintiff declared in Trover for a Bag of Money, and the Converſion of it: The Defendant pleaded, that the Bag of Money was delivered to him as a Pawn to keep until *A.* and *B.* were agreed which of them ſhould have it; and pleaded further, That *A.* and *B.* were not yet agreed who of them ſhould have it; for which Cauſe he kept it, *abſque hoc*, that he converted it to his own Uſe; upon a Demurrer in this Caſe it was held, that the Converſion was traverſable. See the ſame Caſe, 4 *Ed.* 6. *Br. Action upon the Caſe*, 113. So here *Fenner* agreed with *Wray*. 1 *Leon.* 247.

31. *Galliard* brought an Action upon the Caſe againſt *Archer*; wherein the Plaintiff declared, That he himſelf was poſſeſſed of certain Goods, which by Trover came to the Hands of the Defendant, who had converted them to his own Uſe. The Defendant pleaded, That before the Trover ſuppoſed, one *A.* was poſſeſſed of the ſame Goods as of his proper Goods, and ſold them to the Defendant; and that he had not any Notice that the ſaid Goods were the Goods of the Plaintiff; upon which the Plaintiff demurred in Law. And by *Anderſon* the Plea is not good; for the Plaintiff may chuſe to have his Action againſt the firſt Finder, or againſt any other, that hath the Goods after the Sale, Gift, or Trover: And it hath been held by ſome, the Defendant having the Goods by Sale, might traverſe the Finding. See *Contr.* 27 *H.* 6. 13. *a.* And that in Detinue, where the Plaintiff declares of a Bailment, the Defendant may ſay, That he found them, and traverſe the Bailment. 39 *H.* 6. 37. by *Moyle*: And by *Wyndham*, Juſtice, the Defendant may traverſe the Propety of the Goods in the Plaintiff. 12 *E.* 4. 11. 1 *Leon.* 180. *Galliard* and *Archer*'s Caſe.

32. In an Action of Trover for a Gelding, the Caſe was: One *Porter* ſtole this Gelding from the Plaintiff, and ſold it to the Defendant in open Market, by the Name of *Leiſter*, and it was entred ſo in the Toll-Book, that *Leiſter* ſold him. The Queſtion was, If this Alteration of the Name ſhall not make any Alteration of the Property, altho' the Sale was in open Market? *Wyndham* and *Rhodes*, Juſtices, held this to be no good Sale to bar the Plaintiff, and grounded their Opinion on the Statute of the 2 & 3 *Phil. M. c.* 7. which Provides, That no Property of ſtol'n Goods ſhall be altered that are ſold, unleſs the Name and Surname of the Parties to the Sale be written in the Toll-Book: And *Shuttleworth* moved, That it ſhould be in the Market, and walked up and down there for an Hour together, which is not ſet forth by the Defendant in his Bar. But the Juſtices ſaid, That ſuch ſpecial Plea need not to be, but it ſhall be intended. *Owen* 27. *Gibbs*'s Caſe.

33. In an Action upon the Caſe, on Trover and Converſion of ſixteen Broad Clothes; the Defendant pleads, That before the Time of the Trover and Converſion, one *Morrice* was poſſeſſed of thoſe Goods, and ſold them to the Defendant; and before he had Notice that they appertained to the Plaintiff, he ſold them to *J. S.* the which Matter, &c. and it was thereupon demurred, 1 *Cro.* 480. *Gybſon* v. *Garbyn*. But it does not appear what was done thereon, but according to the Caſe, in 2 *Bulſt.* 134, 299.

of *Holman* and *Karritſley*, the Defendant ought to have traverſed the Plaintiff's Property.

34. An Action of Trover at *Paxton*, in the County of *Hunt.* the Defendant pleads a Bargain and Sale at *Royſton* in the County of *Hert.* in the Market there, whereby he after converted them at *P.* in the County of *H.* The Plaintiff ſaith, That he was poſſeſſed of thoſe Goods at *P.* in the County of *H.* and that *J. S.* there ſtole them from him; and by Covin betwixt him and the Defendant, at *P.* in the County of *H.* he ſold them to the Defendant, as he had pleaded. The Iſſue was upon the Sale made Covin, *&c.* and it was tried in the County of *H.* and found for the Plaintiff; and it was moved to be a Mis-trial, for it ought to have been by a Jury of the County of *Hert.* or at leaſtwiſe by a Jury of both Counties. And of that Opinion was *Gawdy.* But the other Juſtice *econtra*; for the Sale is confeſſed, and the Iſſue is upon the Covin, which is well tried by a Jury of the County of *Hertſ.* where it was alledged. And it was afterwards adjudged accordingly. 1 *Cro.* 510. *Harbing* v. *Sherman*, *Goldſ.* 158. *S. C.*

35. In Trover, the Defendant pleaded, That he took them as Bailiff of the King, for a Diſtreſs upon a Plaint *in Curia Manerii*, and ſold them; and it was thereupon demurred, and adjudged ill; for upon a *Diſtringas*, the Cattle ſhall not be ſold, eſpecially in a Court-Baron, altho' it were in the King's Court. 2 *Cro.* 255. *Gomerſal* v. *Wyats.* *S. C.* *Telv.* 194.

36. In Trover and Converſion for two Tun of Wine, the Defendant pleaded, That the King, *Jure Coronæ*, was ſeiſed in Fee of the Priſage of all Wines imported *ex partibus tranſmarinis*, by any Perſon, whether a Subject or Alien; and that the Priſage was *a tempore cujus*, *&c.* anſwered to the King, his Progenitors, their Farmers or Deputies, in the Manner following, *viz.* Out of every Veſſel, importing into any Port, or other Place within this Kingdom, 20 Tun of Wine for any Perſon *a partibus tranſmarinis*, and of that or *de aliquo vaſe inde vini prædict'* unloading a Tun, and out of every Veſſel ſo importing 20 Tun of Wine for any Perſon into any Port or other Place within this Realm; and *inde ſeu de aliquo inde vaſe predict' diſonerat'* two Tun of Wine, *viz.* one before the Maſt of ſuch a Ship, and the other behind the Maſt *ejuſdem navis*; and that the King being ſo ſeized before the Time that two Tuns came to the Defendant's Hands, as the Plaintiff ſuppoſes, *viz.* 21 *Sept. Anno* 5. by his Letters Patent, *hic in Cur' prolat'*, granted to Sir *T. Waller*, the Office of Chief Butler, to him the King, his Heirs and Succeſſors, with all the Fees, *&c.* who was conſtituted thereby Chief Butler, *Habendum*, *&c.* for Life, to be exerciſed by him or his Deputy, *& ulterius dicit*, that the Chief Butler for the Time being uſed and accuſtomed by himſelf or Deputy, to collect and receive to the King's Uſe the ſaid Priſage, due as aforeſaid: And alſo, That the ſaid 13th Day of *April*, *Anno* 7. *quædam navis*, loaden with 20 Tuns of Wine, came to the City of *Exeter* aforeſaid, *a partibus*, *&c.* *ſcil't a Villa de Bourdeaux in Gallia*; and that at the City aforeſaid, nine Tuns and a Half of the ſaid 20 Tuns, being the Plaintiff's Wine, *adtunc exonerat' fuerunt ex navi præd'* *per quod* two Tuns of Wine were due to the King for Priſage; and being *legitime conſtitutus* Deputy to Sir *T. Waller*, *tunc & adhuc* Chief Butler, *& per ejus præceptum* the aforeſaid two Tuns *Vini præd. pro priſagio dicto* 13 *die April.* *anno* 7. *præd.* at the City of *Exeter*, to the Uſe of the King did take, and them to the King's Uſe convert and diſpoſe, *prout ei bene licuit*; *quæ eſt eadem Converſio*, *&c.* that the Plaintiff ſuppoſes to be to the Defendant's Uſe, *& hoc paratus eſt verificare*: To this Plea tho' four Exceptions were taken; yet the Plea was held good. *Telv.* 198. *Kenicot* v. *Bogan.* And this was the Caſe that the late Lord Chief Juſtice *Holt* held, That it was the only good Special Plea extant in our Books *Salk.* 164.

37. In Trover and Converſion of Goods at *D.* in the County of *Nottingham*, the Defendant pleaded, That he recovered againſt the Plain-

tiff a Debt of 20 *l.* by Bill in the King's Bench, and thereupon had a *Fieri facias* directed to the Sheriff of *York*, who *apud Wakefield, in Com. Eborum*, ſeiſed thoſe Goods, and delivered them unto him in Satisfaction of this Execution; and ſo juſtifies the Converſion. And it was thereupon demurred, and without Argument ruled, That the Pleading was ill. Firſt, Becauſe he ſhewed not where the Queen's Bench was at the Time of the Recovery. It being a Court removable; as 5 *Ed.* 4. 8. is. Secondly, the Trover and Converſion is ſuppoſed to be in the County of *Nott.* and he juſtifies in the County of *York*, without traverſing, *&c.* Thirdly, The Sheriff upon a Writ of *Fieri facias* cannot deliver the Defendant's Goods to the Plaintiff in Satisfaction of his Debt. Wherefore it was adjudged for the Plaintiff. 1 *Cro.* 504. *Thomſon* v. *Clerk. Noy* 56. *S. C.*

38. In Trover of Goods, the Defendant juſtifies, as Servant to the Sheriff of *Middleſex*, becauſe the Plaintiff had ſtol'n thoſe Goods, and carried them to *D.* within the County of *Middleſex*; at which Place the Defendant ſeiſed them *ut Bona waviata*; and without Argument it was adjudged for the Plaintiff; for he ought to alledge a Felony committed; and, that the Goods were waived, by the Felon: But it is not alledged that the Felon waived them. Wherefore it was adjudged *ut ſupra.* 1 *Cro.* 611. *Davies*'s Caſe.

39. To an Action of Trover and Converſion of Goods in *London.* The Defendant juſtified, for that one *Robert Baſh* was ſeiſed in Fee of 20 Acres in *Stanſtead*, in the County of *Hertford*, and granted a Rent-Charge to *Robert Baſh*, his Executors and Aſſigns of 16 *l. per Annum*, during the Life of *Frances*, the Wife of *Robert Baſh*; which *Robert Baſh* died Inteſtate, and *Frances* his Wife was Adminiſtratrix unto him; and the Defendant, as her Servant, took a Diſtreſs in the ſaid 20 Acres, for the ſaid Rent, by the Command of the ſaid *Frances*, and impounded them there, and traverſes the Taking and Converſion of them in any other Place. And it was thereupon demurred, and all the Court held the Plea to be ill; for the Inducement to the Traverſe (which ought always to be good) is not a ſufficient Cauſe of Juſtification for the Taking of the Diſtreſs; for this Rent was determined by the Death of *Robert Baſh*, becauſe there cannot be an Occupant of Rent. And the Feme is not Aſſignee by her taking of Adminiſtration; for none can make Title to a Rent to have it againſt the Ter-tenant, unleſs he be Party to the Deed, or conveys a ſufficient Title under it. Wherefore it was adjudged for the Plaintiff. And whereas an Exception was taken to the Plea, becauſe he traverſed the County, the Court did not ſpeak thereto; for that they reſolved the Subſtance of the Plea to be inſufficient. 1 *Cro.* 901. *Salter* v. *Butler. Noy* 46. *S. C. Yelv.* 9. *S. C. Moor* 664.

40. In Trover and Converſion, the Plaintiff declared, That whereas he was poſſeſſed of a Bag of Hops, and a Bag of Flax, to the Value of *&c.* and that the Defendants found them, and the third Day of *October* converted them; and the Defendants pleaded, That *Sandwich* is an ancient Village, and that the Cuſtom of Foreign Attachments is uſed there as in *London*, and that theſe Goods were loſt upon Default in *November*, and traverſed; *abſque hoc* that they were Guilty of any Converſion in *October*, or at any other Time or Day than the Times before, which are contained in the Declaration, That the Defendants were not Guilty before, (*Scil.*) *October*; Upon which the Plaintiff demurred, and Judgment was given for the Plaintiff, altho' it was objected, That the Juſtification here, by the Cuſtom aforeſaid, had taken away the Property; and as the Plaintiff would be barred in Detinue, ſo he is in Trover: But the Court was of the contrary Opinion, That the Defendant's Plea in Bar here ſhall not be good without a Traverſe; and as it is, the Time is not made material, but any Time before is ſufficient. *Hct.* 166. *Green* v. *Bronker* and *Greenſtead.*

41. In an Action upon the Caſe for a Trover, the Defendant after an Imparlance pleaded an Outlawry of the Plaintiff; and it was holden by ſome to be a good Bar, and therefore it may be pleaded after Imparlance; as 16 *E.* 4. 4. in Debt upon Specialty; but not in Debt upon a Contract, Treſpaſs, Battery, Impriſonment, *&c.* for ſuch Matters the King ſhall not have by Outlawry. Q. *if this be Law.* 3 *Leon.* 235. *Markham* and *Pitts*'s Caſe.

42. In an Action upon the Caſe, the Plaintiff declared, That he was poſſeſſed of certain Chattels, which came to the Defendant by Trover; the Defendant pleaded, That heretofore the Plaintiff brought Debt againſt the now Defendant, and demanded certain Monies; and declared, That the Defendant bought of him the ſame Goods (whereof the Action is now brought) for the Sum then in Demand, to which the then Defendant waged his Law, and had his Law, by which *nihil Capiat per breve, &c.* was enter'd; and demanded Judgment, if, *&c.* And by *Wyndham* and *Rhodes*, Juſtices, The ſame is no good Bar in this Action; for the waging of the Law, and the doing of it, utterly diſproves the Contract ſuppoſed by the Declaration in the ſaid Action of Debt, and then the Plaintiff is not bound by the Suppoſal of it, but is at large to bring his Action; and ſo Judgment was given for the Plaintiff. 2 *Leon.* 37 *L. Sands* and *Cagnard*'s Caſe.

43. Trover and Converſion *in Communi Banco*; the Defendant pleaded Judgment *in Banco Regis* upon Special Verdict in Treſpaſs for the ſame Goods; and that the Goods in the one and the other were the ſame, and Converſion and Taking the ſame, *&c.* The Plaintiff demurred; and upon Argument the whole Court were of Opinion, That it was a good Bar, upon the Authority of *Ferrer*'s Caſe; and that notwithſtanding the Caſe of *Putt* and *Royſton*, *in Banco Regis*, adjudged by *Pemberton contra*; which Caſe my Lord Chief Juſtice *Pollexfen* ſaid he was never ſatisfied with, and as he remembred a Writ of Error was brought, and the Judgment queſtioned; but afterwards agreed, That he ſaw no Difference between a General and a Special Verdict. However they all thought a Judgment in the one a Bar to the other; for that the Actions were of the ſame Nature: And Judgment was given for the Defendant. *Show.* 146. *Lechmore* v. *Toplady, & al'.*

44. Action of Trover of certain Plate; the Defendant pleads, That at another Time the Plaintiff had brought his Action for this ſame Plate againſt *J. S.* ſuppoſing the Converſion to have been done by him. And in that Action had Judgment to recover 20 *l.* Damages, and had *J. S.* in Execution for the Damages; and avers, That it is for the ſame Goods, and for the ſame Trover and Converſion; and it was thereupon demurred. And after Argument by *Clerk* for the Plaintiff, That it was not any Plea; becauſe they having Judgment, and the Party's being in Execution, is not any Satisfaction unleſs the Money be paid; and then without Satisfaction it is not any Plea in Bar of this Action: As in Debt againſt two, by ſeveral *Præcipe's*, upon one Obligation, Judgment and Execution againſt one is no Plea for the other without Satisfaction. And Execution of the Body is not any Satisfaction; as 33 *H.* 6. 47. 4 *H.* 7. 29 *H.* 8. Title *Executors* 132. 14 *H.* 4. But all the Court held the Plea to be good; for the Cauſe of Action being againſt divers, for which Damages incertain are recoverable; and he having Judgment againſt the one for Damages certain, that which was incertain before, is reduced *in rem Judicatam*, and to Certainty, which takes away the Action againſt the others. And therefore *Popham* ſaid, If one hath Judgment to recover in Treſpaſs againſt one, and Damages certain, altho' he be not ſatisfied, yet he ſhall not have a new Action of Treſpaſs. By the ſame Reaſon *econtra*, If one hath a Cauſe of Action againſt two, and obtain Judgment againſt the one, he ſhall not have Remedy againſt the other; and the Alledging,

That he hath the one in Execution for this Cauſe, is not an Anſwer to the Purpoſe; and the Difference betwixt this Caſe, and the Caſe of Debt upon an Obligation againſt two, is, becauſe there every of them is chargeable and liable to the intire Debt; and therefore the Recovery againſt the one, is no Bar againſt the other until Satisfaction. And *Fenner* ſaid, That in Caſe of a Treſpaſs, after the Judgment given, the Property of the Goods is changed, ſo as he may not ſeize them again: Wherefore by all the Court, it was adjudged for the Defendant. 2 *Cro.* 73. *Brown* v. *Wooton*. *Moor* 762.

45. Action of Trover of divers Trees, *apud D.* in the County of *Surrey*; the Defendant pleads, That Queen *Mary* was ſeiſed in Fee of the Manor of *D.* in the County of *Suſſex*, where thoſe Trees were growing, and granted it to the Defendant in Tail, whereby he was ſeiſed thereof; and that *J. S.* cut the ſaid Trees and granted them to the Plaintiff, who loſt them, and the Defendant found and converted them, &c. The Plaintiff replies, *De injuria ſua propria, &c.* And thereupon Iſſue was joined. *Coke* moved, That the Replication was ill; for *De injuria ſua propria* is not any Plea, where the Defendant makes Juſtification by claiming an Intereſt in the Freehold to himſelf; as 16 *Ed.* 4. 4. 44 *Ed.* 3. 18. and 14 *H.* 4. 32. is upon the ſame Reaſon. But where one claims not any Intereſt, but juſtifies by Command or Authority derived from another, it is otherwiſe: And of that Opinion was the whole Court. Wherefore a Repleader was awarded. 1 *Cro.* 539. Archbiſhop of *Canterbury* v. *Kemp*.

46. In Trover the Defendant pleaded, the now Plaintiff had brought an Action for the ſame Things againſt *T. S.* and obtained Judgment and Execution, and avers they were the ſame Things; and on Demurrer Judgment was given for the Defendant. And a Diverſity was taken by the whole Court where the Demand and Recovery is of a Thing certain, or of one that is incertain; for if two are jointly and ſeverally bound in a Bond of 100 *l.* there Recovery and Execution againſt the one, is no Bar to an Action againſt the other; for it is no Satisfaction of the 100 *l.* 4 *H.* 7. 22. But where two commit a Treſpaſs which lies intirely in Damages, there a Recovery and Execution againſt the one is a good Bar againſt the other: Nay, 'twas agreed, That the very Judgment was a ſufficient Bar, *quia tranſit in rem judicatam*; and the Incertainty is reduced by the Judgment to a Certainty, and ſo altered and changed from what it was; therefore the Plaintiff cannot reſort back to the Original Incertainty of the Thing demanded; ſo is Judgment in Battery againſt one a good Bar to an Action brought againſt another for the ſame. *Yelv.* 62.

See other Caſes concerning the Plea in this Action, in the following Books.

Hetley 49. *Hedges* v. *Franklyn.*
62. *Panton* v. *Haſſell.*
166. *Green* v. *Bronker* and others.
3 *Cro.* 157. *Lynnet* v. *Wood.*
35. *Lacon* v. *Barnard.*
245. *Swayn* v. *Stephens.*
2 *Keb.* 57. *Skennington* v. *Reynolds.*
437. *Denye* v. *Perry.*
3 *Keb.* 127. *Dakers* v. *Dunkin.*
333. *Ireton* v. *Newton.*
709. *Aſtrey* v. *Ballard.*
1 *Cro.* 539. *Archbiſhop* v. *Kemp.*
1 *Cro.* 667. *Ferrers & al'* v. *Arden.*
2 *Mod.* 63. *Stubbins* v. *Bord* and others.
Stile 331. *Rogers* v. *Done.*
3 *Cro.* 25. *Laicon* v. *Barnard S. C* *Hutton* 81.
11 *Rich.* 2. *Tit. Treſpaſs* 17.
40 *Ed.* 3. *fol.* 27.
46 *Ed.* 3. *fol.* 18.
14 *H.* 7. *fol.* 12.
44 *Ed.* 3. *fol.* 2.
3 *Mod.* 194. *Beck* v. *Thyrwit.*
Stile 178. *Coles* v. *Sybſye.*
2 *Leon.* 177. *Sands* v. *Brocas.*
1 *Cro.* 485. *Comyns* v. *Bowyer.*

2 *Cro.* 165. *Johns* v. *Williams.*
1 *Cro.* 454. *Palmer* v. *Welley.*
5 *Co.* 83. *b. Goldſb.* 158.

2 *Cro.* 68. *Taylor* v. *Chambers.*
1 *Keb.* 305. *Trin.* 14 *Car.* 2.
Danver's Abr. 25.

Sixthly, Of the Trial, and Evidence.

1. Where many are concern'd in the taking Goods, and an Action is brought againſt one or more, it is ſaid, that one of them concern'd in the Taking, may be admitted as an Evidence againſt the Reſt. *Comb.* 367. *Dockwray* v. *Dickenſon.*

2. In Trover, the Defendant can't give a Releaſe in Evidence, but he ought to plead it. *Comb.* 473. *Kingſton* v. *Read. Quære de hoc.*

3. In Trover by an Adminiſtrator on the Inteſtate's Poſſeſſion, the Defendant can't give in Evidence a Will on the General Iſſue; otherwiſe if it is on the Adminiſtrator's own Poſſeſſion. 1 *Salk.* 285. *Far.* 141.

4. In Trover and Converſion, where there could be no Trial by Reaſon of a Fault in the *Habeas Corpora.* 1 *Ven.* 297. *Anonymus.*

5. In Trover at *Niſi prius*, before *Holt* Chief Juſtice, upon Evidence the Caſe was this. A Carpenter ſent his Servant to Work for Hire to the Queen's Yard, and having been there ſome Time, when he would go no more, the Surveyor of the Yard would not let him have his Tools, pretending a Uſage to detain Tools, to enforce Workmen to continue till the Queen's Work was done; and a Demand and Refuſal being proved at one Time, and a Tender and Refuſal at another, *Holt* Chief Juſtice ſaid, That the very Denial of the Goods to him that hath a Right to demand them, is an actual Converſion, and not only Evidence of it, as has been holden; for what is a Converſion, but an Aſſuming upon ones ſelf the Property and Right of diſpoſing of another's Goods; and he that takes upon himſelf the Right of Diſpoſing of them, is guilty of a Converſion; ſo the Taking and Carrying away another Man's Goods is a Converſion. So if one comes into my Cloſe, and takes my Horſe, and rides him, that is a Converſion; And here, if the Plaintiff had received the Goods, upon their being tender'd, notwithſtanding the Action would have lain upon the former Converſion, and the Plaintiff's having his Goods afterwards, would go only in Mitigation of Damages, and he had no regard to the pretended Uſage, but compared it to the Doctrine among the Army; That if a Man comes into the Service, and brought his own Horſe, that the Property thereof was immediately altered and veſted in the Queen, which he had already condemned. And in this Caſe one of the Particulars in the Declaration being ill laid, the Defendant was found Not guilty as to that, and Guilty as to the reſt. *Mod. Ca.* 212. *Baldwin* v. *Cole.*

6. In an Action of Trover and Converſion which was brought for Oats, &c. the Caſe upon Evidence appear'd to be, That certain Treſpaſſers had taken theſe Oats from the Plaintiff, and brought them to the Mill to make into Oatmeal; and the Plaintiff came to the Miller before any Thing done, and demanded the Oats as his, and forbid him to proceed to make it into Oatmeal, but the Miller did proceed for all that, and made it into Oatmeal. And the Judge held it to be a Converſion in the Miller, and directed the Jury accordingly; altho' it was urged by the Council for the Defendant, That a Miller was a Publick Officer, and did but his Duty in this Caſe. And in this Caſe it was held further, that if *A.* takes Goods from me, and theſe afterwads come to the Hands of *B.* by his buying them, or otherwiſe, and he converts them to his Uſe, *B.* ſhall not be charged to me without a new Demand made of them unto him, and a Detention afterwards. *Clayt.* 57. *Holdſworth*'s Caſe, *Mod.* 460. 1 *Cro.* 495. *Golds.* 152.

7. Upon a Motion for a new Trial, the Caſe appeared to be this; an Executor ſeveral Years before, had left ſome Houſholdſtuff in the Houſe, by the Conſent of the Heir, who uſed them, afterwards; and within ſix Years of the Action brought, the Executor demands the Goods, and the Heir refuſed to let him have them; whereupon this Action of Trover was brought, and the Statute of Limitattions was pleaded; And it was adjudged, that the Uſing the Goods before the Demand, was no Converſion or Evidence of it; for it was with the Conſent of the Executor till then; and the Demand being within ſix Years, the Refuſal which enſued it is the only Evidence of a Converſion in this Caſe, and that being within the ſix Years, tho' the Trover was before the Statute, cannot be pleaded. *Fareſl.* 99. *Wortley Montague* v. *Sandwich.*

8. In an Action of Trover and Converſion, upon Not guilty the Evidence was, that the Goods were taken and ſold, by Virtue of a Commiſſion of Sewers; and it was ruled, that this Matter might be well given in Evidence, upon Not guilty pleaded; as detaining of Beaſts in a Market for Toll. *Alleyn* 62. *Combs* v. *Cheyney.*

9. A Denial to deliver Goods, which the Defendant hath in his Poſſeſſion is Evidence unleſs it be in Trover, for a Thing in the open Fields, which the Plaintiff might have taken; but the Finding of its being denied by a Verdict, is not of it ſelf ſufficient for the Court to conſtrue it a Converſion; but it is ſaid that it is good Evidence to a Jury of a Converſion. 1 *Roll's Rep.* 59. *Iſaack* v. *Clarke.*

In this Caſe of *Iſaack* v. *Clarke,* It will be very proper to ſtate the Caſe, and take Notice of the ſeveral Points reſolved therein. The Jury found by a Special Verdict, that one *Adams* had a Judgment againſt one *Lewis*, and againſt one *Watkins*, and another that were his Pledges, in the Court of the City of *Exeter*; and the Defendant *Clarke* being the Serjeant at Mace of the City, after a *non eſt inventus* returned againſt *Lewis*, came to the Houſe of *Watkins*, to levy an Execution of the Debt upon certain Buts of Wine, and by Virtue of a *Fieri facias* ſeiſed them; and the Plaintiff being there ſaid to *Clarke*, *I deliver to you this Bag of Money, in which was* 22 l. *as in the Declaration, with an Intent, that you ſhall keep it till the next Court; only for a Delivery of the Wine aforeſaid to the ſaid* Clarke *that Day upon Requeſt, if* Watkins *do not obtain a Forbearance of the Debt of the Plaintiff* Adams. But *Watkins* did not obtain ſuch Forbearance, nor was the Wine redeliver'd, or any thing done at the next Court; and afterwards the Plaintiff demanded the Bag of Money, and *Clarke* refuſed to pay it. Upon this Caſe two Queſtions aroſe. 1. Whether *Iſaack* hath a Right to have the Bag of Money, or no. 2. Admitting that he has, yet whether he has not miſtaken his Action. *Haughton*, as to the firſt Point was of Opinion, That the Plaintiff hath no Right to the Bag, inaſmuch as it is found that the Serjeant ſeiſed the Sack, &c. and it appears he did not take them out of the Poſſeſſion of the Owner, but had this Bag of Money as a Pledge, that the Goods ſhall be redeliver'd upon Requeſt at ſuch a Day; yet notwithſtanding, tho' the Defendant does not make a Demand, at the Day, yet the Plaintiff ſhall not have the Bag of Money, till the Serjeant hath the Buts redeliver'd to him; for the Requeſt at the Day is not material, but he might requeſt it at any Time afterwards; as if a Man pawns Goods to be redeliver'd ſuch a Day upon Requeſt, if he does not requeſt the Goods, on that Day he may do it at any Time afterwards; as to that firſt Point, *Doderidge* was of another Opinion, and that as there was no Requeſt on that Day the Privity of the Bailment was determin'd. *Croke* was of the ſame Opinion with *Haughton*, as to that Point. But *Cook* ſaid, he ſhould be of the Opinion of his Brother *Haughton*, if there was no more in the Caſe than was mention'd by him; but here ſays he, the Plaintiff hath a good Right to the Sack; for as the *Fieri facias* was returnable at the next Court, ſo that the Serjeant might have ſold the Sack at any Time, before the Day of the Return, but when the Day is paſt, his Power of ſelling is determined. And here it appears to be paſt, and it could be to no Purpoſe for the Serjeant to have the Sack deliver'd him, when he can do nothing with it; and if his Power had not been determined, 'tis true a Requeſt at that Day would not have been material. As to the 2d Point, the Queſtion was properly divided into three Parts. 1. Whether Trover and Converſion would lie upon a Bailment. 2. Whether the Denial of the Money without any Thing more, was a Converſion. 3. If all be adjudged againſt the Defendant, yet whether upon this Verdict the Plaintiff could have Judgment againſt the Defendant. In the Argument of this Caſe divers Points were ſpoken to, whether the Bailment is traverſable, of the Nature of an Action of Detinue, and its Difference from an Action of Trover, where the Privity of the Bailment is determined; where a Man ſhall have Advantage upon a Special Plea, which he could not have upon Not guilty, where an Action of Treſpaſs or Trover will not lie againſt the Perſon to whom Goods are bailed, and where it does, where the Denial ſhall or ſhall not be deem'd a Converſion; and the Difference between Money in a Bag and out of a Bag; but upon the Whole, Judgment was given againſt the Plaintiff.

10. Where the Selling the Goods was adjudg'd not to be a Matter iſſuable. 1 *Anderſon* 20. the Lord *Mountague* againſt the Counteſs of *Worceſter*.

11. An Action of Trover was brought for five Cows; upon Not guilty pleaded, a Special Verdict was found, that one *Blegrave* was poſſeſſed of thoſe Kine, and put them to Paſturage with the Defendant, and agreed to pay him twelve Pence for every Cow weekly, as long as they remained with him at Paſture; and that afterwards *Blegrave* ſold them to the Plaintiff, and he required them of the Defendant, who refuſed to deliver them to the Plaintiff, unleſs he would pay for the Paſturage of them for the Time they had been with him, which amounted to ten Pounds. Afterwards one *Forſter* paying him the ſaid ten Pounds, by the Appointment of *Blegrave*, he delivered the five Beaſts unto him; and if *ſuper totam materiam* he be guilty, they find for the Plaintiff and Damages twenty-five Pounds; and if, &c. then for the Defendant. *Jones* and *Croke* (*abſentibus cæteris Juſticiariorum*) conceived, that this Denial upon Demand and Delivery of them to *Forſter*, was a Converſion; and that he may not detain the Cattle againſt him who brought them, until the ten Pounds be paid, but is put to his Action againſt him, who placed them at Paſturage. And it is not like to the Caſes of an Innkeeper or a Taylor; they may retain the Horſe or Garment delivered to them until they be ſatisfied; but not when one receives Horſes or Kine, or other Cattle to Paſturage, paying for them a weekly Sum, unleſs there be ſuch an Agreement betwixt them. Whereupon a Rule was given, that Judgment ſhould be entred for the Plaintiff. 3 *Cro.* 271. *Chapman* v. *Allen.*

12. In an Action of Trover and Converſion, nothing was proved but a tortious Taking of the Cattle by way of Treſpaſs, and driving them away; and it was ruled a good Ground for this preſent Action, and a Converſion ſhall be intended; otherwiſe when he comes to them by Trover, there an actual Converſion ſhall be proved. *Cl.* 112. *Beckwith* v. *Elſey*, 2 *Syd.* 264. *Bruen* v. *Roe*, agrees as to the firſt Point, but ſays, That where the Defendant comes by the Goods by Trover, that an actual Demand muſt be proved.

13. In an Action of Trover, &c. to prove the Converſion, it was offered, that the Plaintiff did demand Satisfaction for the Corn; and it was ruled good *Evidence*, the Demand being to the Party himſelf who took the Corn; tho' the Corn itſelf was not *demanded*, but Satisfaction, *quod nota*. *Clayt.* 122. *Rookeby*'s Caſe.

14. *A.* brought an Action upon the Caſe, and declared, That the Dean and Chapter of *Weſtminſter*, did leaſe unto him a Houſe for Years by Deed indented, of which Indenture he was poſſeſſed, and afterwards loſt it; and by Trover it came to the Hands of the Defendant, who ſold it, and converted the Money thereof coming to his own Uſe; the Defendant pleaded Not guilty, and the Plaintiff gave in Evidence, that the ſaid Leaſe was made to him, and to one *B.* and that the ſaid Indenture was deliver'd to the ſaid *B.* and that was agreed to be the Poſſeſſion of them both; and afterwards *B.* died, and afterwards *A.* the Plaintiff was the ſole Owner of it; and that was holden to be good Evidence on the Part of the Plaintiff; and if the Plaintiff can prove the other Part of his Declaration, *i. e.* That the Indenture came into the Hands of the Defendant, and that he ſold it, that then he ſhould recover. But it was given in Evidence on the Defendant's Part, that the ſaid *B.* ſold to the ſaid Defendant his Part and Intereſt in the ſaid Leaſe, and alſo the ſaid Indenture; ſo as now he is become Tenant in Common with the Plaintiff, and then his Sale doth not give any Cauſe of Action to the Plaintiff, and that was holden by the whole Court to be good Evidence without pleading it; the Caſe went further, that *A.* being within Age, his Father leaſed the Lands for twenty Years; and afterwards the Son at his full Age, upon the Back of the Indenture, did releaſe to the Defendant all his Right; and it was holden by *Wray* Juſtice, that when the Father leaſed, he did it as Guardian to his Son; and it was not any Ejectment, but it was a Leaſe in the Behalf of the Son, although the Son might avoid it; and then when the Endorſement is *ut ſupra*, the ſame is a good Aſſignment, and after the Plaintiff was Nonſuit. 2 *Leon.* 220.

15. In an Action of Trover and Converſion of Goods to the Defendant's Uſe; upon Not guilty pleaded, they were at Iſſue; and there an Inventory of the Goods was given in Evidence to the Jury, as the Goods were appraiſed by Upholſters. And in this Evidence another Point did ariſe, theſe Goods were taken in Execution, and delivered to the Defendant by the Sheriff; and afterwards the Owner of the Goods, againſt whom the Execution was awarded, made a Deed of Gift of them to the Plaintiff by theſe Words, *He granted all thoſe Goods which were late put in Execution.* Coke Chief Juſtice held, That this was not ſufficient Evidence. 4 *Leon.* 243. *Arden* and *Goad*'s Caſe.

16. In an Action of Trover and Converſion, if the Jury find the Converſion upon a Bailment, yet that does not deſtroy the Action, if it is for a Converſion of Money in a Bag, a Denial is a Converſion, becauſe it can't be known from other Money; but a Denial of the Delivery of a Bond is not a Converſion of it ſelf; but where Money is deliver'd as a Pledge, till another Thing be redeliver'd, an Action of Trover will not lie againſt the Perſon who receives the Money, till the Thing for which the Money was pledged be redeliver'd. *Moor* 841.

17. Where the Plaintiff had a *Bill of Exchange* drawn upon the Defendant, and the ſame was ſent by *J.* to be accepted, who kept it, and would not deliver it, tho' the Plaintiff had indorſed the Bill, yet *J. S.* might be a Witneſs. 1 *Salk.* 136. *Lucas* v. *Haynes*.

18. See a Special Verdict in Trover for Tithes. *Yelv.* 43. *Chambers* v. *Maſon*, and ſeveral Exceptions to the Matters found thereby.

Concerning Evidence in Trover.

1. In an Action of Trover for a Ship and Cargo; It was objected in Point of Evidence, that the Cargo was ſhipped by *A. B.* and Company; and *B.* being dead, the Action brought by *A.* only is ill, becauſe it appears others have an Intereſt; but it was ruled, that this ought to be proved, and if there are others, it is Matter in Abatement, and ought to have been ſo pleaded; and a Diſtinction was made between an Action

founded upon a Tort, as this was, and a Contract where the Plea is *Non Aſſumpſit*; becauſe upon *Non Aſſumpſit* it may be deem'd another Contract, but the Party may make a Tort joint or ſeveral; and if a Man brings Trover for a Ship, and upon the Evidence it appears he has but a ſixteenth Part, it is good, and the Intereſt of the others ſhall only be given in Mitigation of Damages. *Dockwray* and *Dickenſon*. *P.* 8 of *W.* 3. *B. R. Skynner* 640.

2. In an Action of Trover brought by an Executor or Adminiſtrator, on the Poſſeſſion of the Teſtator or Inteſtate, it is not neceſſary for the Plaintiff to prove himſelf Executor or Adminiſtrator; but if it be brought on his own Poſſeſſion, he muſt prove it, to make himſelf a Property in the Goods as Executor, *&c. Far.* 141.

3. An Action upon the Caſe was brought for not delivering a Horſe, and for converting it to his own Uſe, held good after a Verdict; but upon a Demurrer, *Hob.* was of Opinion it would have been naught. 3 *Cro.* 16. 2 *Cro.* 150. 1 *Vent.* 366. 1 *Syd.* 295.

4. An Action of Trover was brought for Goods, and the Proof depended upon a *Fi. fa.* and a *Venditioni exponas*; and becauſe they could not be found upon Record, Proof of them by Witneſſes was admitted as Evidence; ſo a Conviction of Record was proved by Witneſſes, the Record being burnt, it being not a Matter directly in Iſſue, but only Inducement to the Iſſue. *Har.* 323.

5. In Trover and Converſion, Iſſue was join'd, That the Horſe in Queſtion was bought at *Dale* in the County of *York*, in open Market there; but the Evidence was, That it was bought at *S.* in *Lancaſhire*; and it was holden, That this did not prove the Iſſue; and that as this is pleaded, the Place is material; whereas upon a General Iſſue it had not been ſo. *Clay.* 131. *Anonymus.*

6. In Trover, upon Evidence at a Trial before *Holt*, Chief Juſtice, at the Sittings in *Middleſex*, the Caſe was, The Plaintiff proved the Goods to be in his Poſſeſſion, and to be taken away by the Defendant: The Defendant ſhewed, That theſe were the Goods of *Jane Blackham*, in her Life-time; and that the Defendant had taken out Letters of Adminiſtration to her, and ſo was intitled to the Goods. Upon this the Plaintiff proved, That ſome few Days before her Death, ſhe was actually married to him: And in Anſwer to that it was inſiſted, that the Spiritual Court had determined the Right to be in the Defendant; for they could not have granted Adminiſtration to the Defendant, but upon ſuppoſing there was no ſuch Marriage; and that this Sentence being of a Matter within their Juriſdiction, was concluſive, and could not be gainſaid in Evidence. And it was ſaid by *Holt* Chief Juſtice, That a Matter which has been directly determined by their Sentence, cannot be again tried. Their Sentence is concluſive in ſuch Caſes, and no Evidence ſhall be admitted to prove the contrary; but that is to be intended only in the Point directly tried. But otherwiſe is it, if a collateral Matter be collected or inferred from their Sentence, as in this Caſe; becauſe the Adminiſtration is granted to the Defendant, therefore they infer that the Plaintiff was not the Inteſtate's Huſband, as he could not have been taken to be, if the Point their tried had been Married or Unmarried, and their Sentence had been, Not married. 1 *Salk* 290. *Blackham*'s Caſe.

7. In an Action of Trover for Money, the Caſe upon Evidence appear'd to be, That the Plaintiff's Son had a general Authority from his Father, to receive and pay his Father's Money. The Son took a Bill for Money due to his Father, and received it without a particular Authority for that Purpoſe; and this Receipt was with an Intent to imbezil and ſpend it: But he gave a Receipt as for Money had to his Father's Uſe; and this Money was given to the Defendant. The Queſtions were, Firſt, If the Son could be a Witneſs in this Caſe to prove the Delivery? And Secondly,

Whether the Father could maintain an Action of Trover? *Holt*, Chief Juſtice, was of Opinion, That the Son might be admitted as a good Witneſs, his Teſtimony being corroborated by other Circumſtances; and that the Action was maintainable for the Father; for that the general Authority that the Son had to take his Father's Money, made the Receipt of the Money to be to his Father's Uſe, and is a good Diſcharge of the Debt, ſo as that the Father could not avoid the Payment, and charge the Perſon that paid the Money with an Action; and then, if the Payment was a good Diſcharge, it is reaſonable it ſhould be his Money; and the Poſſeſſion of the Son is the Poſſeſſion of the Father, the Son being to this Purpoſe as his Father's Servant; and according to this Opinion the Plaintiff had a Verdict, but he ſaid he was willing to have a Caſe made of it; but the Defendant acquieſced in his Opinion. 1 *Salk.* 209.

8. In an Action on the Caſe for a Trover and Converſion brought by *J. S.* a Citizen of *Colcheſter*, againſt the Farmers of Toll of the City of *London* for taking of Goods; the Defendant pleaded Not guilty. Upon a Trial at Bar, *Jones* and *Croke* being only in Court, the Defendant confeſſed the Taking of the Goods for Non-payment of Toll, which the Citizens of *London* claimed by Cuſtom, and the Citizens of *Colcheſter* claimed to be exempt by Charter of King *Richard*, and the Citizens of *London* proved by ſeveral Records and Entries in their Books, that the Citizens of *Colcheſter* paid Toll. And on the Evidence, the Counſel for the Plaintiff objected, That this was no good Evidence on Not guilty, but ought to have been pleaded Specially; to which Opinion *Croke* inclined. *Sed Jones econtra*; for it is not like a general Action of Treſpaſs, in that he muſt plead Specially the Cuſtom for Toll; but in an Action on the Caſe for Trover and Converſion, every Thing that proves the Converſion lawful may be given in Evidence on the General Iſſue; but the Jury was permitted to bring in a Special Verdict if they pleaſed: Nevertheleſs they found a general Verdict for the Defendant; and Judgment was given accordingly. *W. Jones* 340. City of *Colcheſter* v. City of *London*. *Note*; It appears by 1 *Roll's Rep.* 44, in the Caſe of *Hill* and *Hawkes*, That the Cuſtom to take the Toll may be pleaded Specially.

9. In Trover, upon Not guilty pleaded it appeared in Evidence, that the Defendant was Tenant by the Curteſy of Lands in *Ireland*, and had cut down and ſold the Trees of the Eſtate; and that the Reverſion belonged to the Plaintiff, and two others in Coparcenary: Upon a Caſe made for the Opinion of the Court, it was reſolved. Firſt, That in local Actions, as in Treſpaſs *quare clauſum fregit*, the Plaintiff cannot prove a Treſpaſs but where it lay, nor lay it in any other Place but where it is; but it is otherwiſe in Actions Tranſitory, as Trover: *Ergo*, here he may lay the Converſion here, and prove it in *Ireland*. *Vide Stile* 331. Secondly, One Jointenant, or Tenant in Common, or Parcener, cannot bring Trover againſt another; if he does, it is good Evidence to deſtroy the Action upon Not guilty: But if one Jointenant brings Trover againſt a Stranger; in that Caſe the Defendant may plead it in Abatement, but cannot take Advantage of it in Evidence. 2 *Lev.* 113. *Cro. El.* 554. 1 *Salk.* 290. *Brown* v. *Hedges*.

10. The Detainer of Goods from an Owner after Requeſt, is allowed for a ſufficient Evidence to maintain a Converſion: And *Hobart* ſaid, That tho' legally it were not a Converſion, yet in that Caſe it was reaſonable to allow it for an Evidence to prove a Converſion; becauſe, if one Man have Goods of another lawfully, by Finding or Bailment, yet when the Owner requires them, he that had them can no longer lawfully hold them; and therefore when a Man ſtill detains them from another, it argues he claims them as his own, and ſo uſes them. *Hob.* 187. *Agar* v. *Liſle*. *S. C.* not *S. P.* 1 *Brow.* 5. *S. C. Hutt.* 10. But that Book ſays, a Requeſt and Refuſal to deliver is good Evidence to prove a Converſion; but if it be found Specially, it cannot be adjudged a Converſion.

11. If the Goods were not the Plaintiff's, the Defendant ſhall not plead it; but ſhall plead Not guilty, and give it in Evidence. *Bro. Action on the Caſe. Pl.* 109.

12. In an Action upon the Caſe upon a Trover and Converſion of 200*l.* deliver'd by the Plaintiff to the Defendant; and upon Not guilty pleaded, the Queſtion was, if Denial by the Defendant to pay it upon Requeſt, would bear an Action; and the Caſe of *Iſaac* was argued, who brought an Action of Trover, *&c.* for 200*l.* in a Bag; and by a Verdict it was found that a Demand was made thereof, and a Denial to pay; and by *Doderidge*, it was a Converſion.

13. Trover for fourteen Lemon-Trees, and the Statute of Limitations pleaded. On Evidence at *Niſi Prius, coram Holt*, Chief Juſtice, it appeared, The Plaintiff obtained Leave from my Lord *Brudenell* above ſix Years before to have the Trees ſtand in his Garden at *Twittenham*; and that his Lordſhip's Gardener might take Care of them. After my Lord ſold his Garden, with all his Trees therein, to my Lord *Portland*; who afterwards ſold the Garden, and whatever he had from my Lord *Brudenell*, to the Defendant; and a Demand and Refuſal within ſix Years proved upon the Defendant.

Here it was objected, 1. That the Gardener, who received the Trees firſt from the Plaintiff, and continued Gardener all along, and looked after and reared the Trees, could not be a Witneſs; for that he, in caſe he proved a Title in the Plaintiff, could hereby intitle himſelf to an Action for his Labour and Skill employed in rearing up the Trees; whereas if it went for the Defendant, he was to have nothing.

But this was over-ruled by *Holt* Chief Juſtice, Becauſe if the Gardener took Care of them as my Lord *Brudenell*'s Servant, he was to have nothing for his Pains from the Defendant.

2. If my Lord only gave the Gardener Leave to do it for the Plaintiff, the Gardener then was ſo far the Plaintiff's Servant; and it was never doubted, but a Servant was a good Witneſs for his Maſter.

He alſo held, That theſe Trees being in Boxes, and ſeparate from the Freehold, could not paſs by the Grant of the Garden, nor by the Words (all his Trees therein); for they were not his Trees; that is, my Lord *Brudenell*'s. Nay, It would be hard to comprehend them by Conſtruction within the Grant, if the Words had been (all the Trees in the Garden), without there were a Schedule of the Trees intended to paſs, and the Plaintiff's Trees mentioned therein; but he agreed, if they had been conveyed by my Lord *Brudenell*'s Grant, that had been a Converſion; and being above ſix Years, the Iſſue would be againſt the Plaintiff.

And beſides that, the Grant of the Garden was a Determination of the Licenſe given to the Plaintiff; and that the Grantee might diſtrain the Trees Damage-feaſant, but he having not done ſo, but ſuffered them to continue, was ſo far from a Converſion, that it was Evidence of a Licenſe by him. And he ſaid, That by a Grant of all a Man's Trees, Apple-trees would not paſs. And the Plaintiff had a Verdict. *Mod. C.* 170. *Oliviere* v. *Vernon.*

14. In an Action upon the Caſe on Trover, 'twas found by a Special Verdict, That one *Peper* was poſſeſſed of thoſe Goods, and the Defendant found them; and *Peper* made the Plaintiff his Executor; and that the Defendant knowing them to appertain to the Plaintiff, denied to deliver them unto him upon his Requeſt. And whether that were a Converſion without any other Act done? was the Queſtion; and all the Juſtices, *Popham* abſent, held, That it was a Converſion by the ſole Denial. But being afterwards moved again, *Popham* held it to be no Converſion: But it was cited at the Bar, That 23 *Eliz.* in this Court, it was ruled to the contrary. *Et adjournatur.* 1 *Cro.* 495. *Eaſon* v. *Newman S. C. Goldſ.* 152. *S. C. Moore* 466. and there 'tis ſaid to be adjudged a Converſion in

Popham's Abſence, and cited to be ſo adjudged. *Moor* 841. *Iſaac* v. *Clark*. *Brown* 17. *Anonymus.* Adjudged a Converſion.

15. In an Action of Trover and Converſion; at the Trial, Mr. Attorney General excepted againſt the Evidence, That if it were true, it deſtroy'd the Plaintiff's Action; inaſmuch as it amounted to prove the Defendant Guilty of Felony; but that they will not ſuffer a Man to ſmother a Felony and bring Treſpaſs for that which is a kind of a Robbery. Indeed, ſaid he, If they had been acquitted, or found guilty of Felony, the Action would lie; and therefore it may be maintained againſt Mrs. *Cory*, who was ſo; as likewiſe was *William Maynard* acquitted upon an Indictment of Felony for this Matter, but not againſt the reſt. But my Lord Chief Baron declared, and it was agreed, that it ſhould not lie in the Mouth of the Party. To ſay that he himſelf was a Thief, and therefore Not guilty of the Treſpaſs; but perhaps if it had appeared upon the Declaration the Defendant ought to have been diſcharged of the Treſpaſs. *Quære* what the Law would be if it appear'd upon the Pleading, or were found by a Special Verdict. My Lord Chief Baron did alſo declare, and it was agreed, That whereas *William Maynard*, one of the Witneſſes for the Plaintiff, was Guilty, as appeared by his own Evidence, with the Defendants, but was left out of the Declaration, that he might be a Witneſs for the Plaintiff; and that he was a good and legal Witneſs, but his Credit was leſſened by it; for that he ſwore in his own Diſcharge; for that when theſe Defendants ſhould be convicted, and have ſatisfied the Condemnation, he might plead the ſame in Bar of an Action brought againſt himſelf; but thoſe in the *ſimul cum* were no Witneſſes. Several Witneſſes were received and allowed to prove, that *William Maynard* did at ſeveral Times diſcourſe and declare the ſame Things, and to the like Purpoſe that he teſtified now. And my Lord Chief Baron ſaid, Tho' a Hear-ſay was not to be allowed as a direct Evidence, yet it might be made uſe of to this Purpoſe; *viz.* to prove that *William Maynard* was conſtant to himſelf, whereby his Teſtimony was corroborated. One *Thorn*, formerly Mr. *Reynel*'s Servant, being ſubpœna'd by the Plaintiff to give Evidence at his Trial, did not appear. But it being ſwore by the *Exeter* Waggoner, That *Thorn* came ſo far on his Journey hitherward as *Blandford*, and there fell ſo ſick that he could not travel any farther; his Depoſitions in Chancery, in a Suit there between theſe Parties about this Matter, were admitted to be read. 1 *Mod.* 282. *Lucy Luttrel* v. *G. Reynel*, Eſq; *G. Turbervile*, Eſq; *J. Cory* and *Anne Cory*.

See the following Caſes concerning this particular Head of the Trial and Evidence.

2 *Keb.* 750. *Thomas* v. *Day.*
3 *Keb.* 57. *Harvey* v. *Loe.*
59. *Owen* v. *Lewis.*
397. *Verdale* v. *Martin.*
Allen 18. *Wright* v. *Pindar.*

2 *Keb.* 39. *Litcott* v. *Backwell.*
487. *Cotton* v. *Daintry.*
3 *Keb.* 528. *Knoyle* v. *Heymet.*
Allen 92. *Combs* v. *Cheny.*
Bruen v. *Roe.* 1 *Syd.* 264.

Seventhly and Laſtly, **Of the Judgment and Execution.**

1. In Trover, the Plaintiff declared of a finding by ten Perſons, and nine of them converted them; and upon Not guilty pleaded the Plaintiff had a Verdict; but the Judgment in the Common Pleas was reverſed upon a Writ of Error, becauſe the Converſion is the Gift of the Action; and if a Man finds Goods, 'tis lawful for him to take them up. 3 *Salk.* 366.

2. Where one Defendant pleads Not guilty, and the other a Releaſe; If it be found for the Defendant upon the Releaſe the Plaintiff ſhall not have Judgment againſt the other. *Comb.* 303, 310. *Kiffin*'s Caſe.

3. Where a Judgment was obtained againſt Huſband and Wife in Trover, and the Plaintiff enter'd his Judgment that the Wife ſhould be amerced; and it was held ill, for the Wife could not pay without the Huſband, and the Judgment ſhould have been that they ſhould both be amerced. *Wood & Ux.* v. Doctor *Suckling*. 2 *Cro.* 432.

4. Where the Judgment was, That the Plaintiff ſhould recover his Horſe or Damages; it was held ill, and the Judgment was reverſed. 1 *Cro.* 116. *Knight* v. *Bourne*.

5. Before the Act of the 4th and 5th of King *William* the Third, it was held where three Plaintiffs brought an action of Trover, and one of them died before Verdict, that the Action abated. *Raymond* 463. *Wedgewood* and others againſt *Bayly* and others.

6. A Judgment was reverſed *Niſi*, becauſe it was enter'd, that the Jurors, in giving their Verdict *dixerunt pro querente*, and in the Awarding of the *Venire* it was ſaid, *Ideo præcept' fuit, &c.* without any more. *Stile* 195. *Batisford* v. *Tate*.

7. In Trover and Converſion of 2000 Loads of Coals; upon Not guilty pleaded, the Defendants were found Guilty ſeverally for ſeveral Loads of Coals, and were found ſeverally Not guilty for the Reſidue, and Judgment accordingly, and intire Damages; and one *ideo in miſericordia* againſt the Defendants, and one *ideo in miſericordia* againſt the Plaintiff, *pro falſo clamore*; and thereupon a Writ of Error was brought in the Exchequer-Chamber; and the Error aſſigned, becauſe the Judgment was againſt both the Defendants, for ſeveral Damages, ſeverally; for it was alledged, that ſeveral Damages ought not to be aſſeſſed; but there being a joint Trover and Converſion laid to their Charge, they ought to have been both found Guilty, and they ought not to have been divided in the Verdict, and in the aſſeſſing of Damages; and if they might be ſevered, yet the Plaintiff ought to have but the Damages given againſt one of them, as it is in Sir *John Heydon*'s Caſe. *Coke Rep.* 11. *fol.* 5. and 44 *Ed.* 3. 7. But all the Juſtices and Barons agreed, That the Plaintiff ſhould have ſeveral Damages; for being found ſeverally Guilty of ſeveral Parcels converted, he ſhall have Judgment accordingly; and it is not like Sir *John Heydon*'s Caſe, where there was but one joint and ſole Treſpaſs of Battery, and ſo found; and there, altho' the Damages were ſeverally aſſeſſed, yet the Plaintiff ought to take his Judgment for Damages but of one: But becauſe the Treſpaſs is ſeveral, and ſo found, *viz.* the one at one Time, and the other at another, altho' it be contrary to the Suppoſal of the Writ, yet being found by Verdict, it ſhall not abate the Writ; and the Plaintiff ſhall recover according to the Verdict, as it is there ſaid in the ſame Caſe: So here, this being ſeverally found, and the Converſion by them ſeverally of ſeveral Things, the Damages are well aſſeſſed ſeverally, and he ſhall have Judgment againſt them ſeverally for Damages, according to the Verdict: And it was ſaid, that there were divers Precedents in the King's Bench, and Common Bench, to that Purpoſe. The ſecond Error aſſigned was, That there ought to have been ſeveral Judgments *de ideo in miſericordia* againſt the Defendants; and it being otherwiſe it is Error. But againſt that it was reſolved, that there ſhall be but one Judgment only of *Miſericordia*, altho' the Defendants be ſeverally found Guilty; and ſo are the Precedents; whereupon the Judgment was affirmed. *Vid.* 44 *Ed.* 3. 6. & 6. 9 *Hen.* 6. 2, 22. *Aſſiſ.* 76. 3 *Cro.* 54. *Player* v. *Warn* and *Dewes*.

8. Trover by five; and before Verdict one of them dies, and they proceed to Trial, and Verdict for the Plaintiffs; and then the Plaintiffs ſuggeſt, that one of them is dead, and pray Judgment for the Reſt, and had it; and the Defendants bring a Writ of Error; and aſſigned for Error, that the Party died before Verdict, and ſo Verdict was given for a dead Perſon. And after Argument at the Bar Judgment was reverſed; becauſe every Man ſhall recover according to the Right which he hath at

the Time of the bringing the Action; and therefore, if the Heir brings an Ejectment, and his Anceſtor dies ſubſequent to his Action, he ſhall not recover. And in this Caſe, altho' the Plaintiffs were Jointenants, and had a Capacity of having the whole ſurvive; yet in Truth, every one had but a Moiety, and ſo were not at the Time of the Action intitled to ſo much as they were after the Death of one of the Plaintiffs. And as to the Caſe of 2 *Bulſt.* 262. *Spring*'s Caſe, he reports the Reaſon of the Judgment to be, becauſe by the Death of the one the Action ſurvives to the other: But he miſtakes the Reaſon, as appears by *Read* and *Readman*'s Caſe. As to the Caſes where Treſpaſs is brought againſt many, and one dies, they differ much from this Caſe; becauſe there the Treſpaſs is Joint or Several, at the Pleaſure of the Plaintiff; as to the Caſe of a Replevin, 3 *Cro.* 574. tho' an Avowant is to ſome Purpoſes a Plaintiff, yet he doth not bring the Action; and ſo not within the Rule, That the ſame Right muſt continue, which was at the bringing the Action; and ſo Judgment was agreed to be reverſed by the Opinion of three againſt *Dolben*, who deſired Time to conſider. *Raym.* 463. *Wedgewood* and others *v. Baily* and others.

9. *Bigg* brought an Action of Trover and Converſion of a Horſe, and had a Verdict and a Judgment. The Bail for the Defendant in the Action brought a Writ of Error to reverſe this Judgment given againſt the Principal. The Court was moved to abate the Writ; the Court anſwered, If the Writ of Error be brought upon the principal Judgment it ought to be abated. It hath been a Queſtion heretofore, Whether a Writ of Error brought upon the principal Judgment, and alſo upon the Judgment given againſt the Bail, together, be good in Part, and ill for the other Part? But of later Times it hath been ruled, that it ought to abate for all. Therefore let the Party ſhew Cauſe why the Writ ſhould not be abated here. *Style* 174. *Shayler* v. *Bigg.*

10. In an Action of Trover and Converſion and the Declaration upon the Imparlance-Roll had Spaces for the Day and Year, of Loſing, Finding, and Converſion of the Goods; but the Iſſue-Roll, and all the reſt, were perfect in this Point.

And the Court was of Opinion, that the Imparlance-Roll could not be amended, and made perfect by the Iſſue-Roll, becauſe it was the Original, and was to warrant the other, and not *é converſo*. But yet becauſe upon Iſſue Not guilty, a Verdict was given for the Plaintiff, the Court gave Judgment for him; becauſe the Declaration, as it was found in the Imparlance-Roll, was good enough in Matter; for the Trover and Converſion was laid in the *Preterperfect Tenſe*, and ſo before the Action brought; and ſo the Fault in the Declaration being but in Form, was holpen by the Statute of *Jeofails. Hob.* 76. *Parker* v. *Parker. S. C. Hutt.* 14. *S. C.* 1 *Bro.* 9.

11. In Trover and Converſion of Goods in the King's Bench; the Defendant pleaded not Guilty; the Plaintiff had a Verdict and Judgment: The Defendant brought a Writ of Error and aſſigned two Errors; the one, That there was no Bill filed; the other, That there was no Bail. And upon a *Certiorari* in that Caſe awarded and returned, it was certified, that there was neither Bill nor Bail filed; and the Judgment, notwithſtanding the ſaid Errors, was affirmed *in Cam. Scacc. Tr. Anno* 17. *Dom. Regis, viz.* 5. *die Julii in eodem term.* and the Record and the Proceedings on the ſame Writ of Error were remanded, *eod. Ter. in Banco Regis. qu. Vide tamen* 16 R. 1. *rot.* 945. *in Banco Regis ubi tam prim' Judicium quam ſecundum intratur.*

1. The Want of a Bill being the Original, was taken to be within the Meaning and Intent of the Statute of 18 *Eliz. c.* 14. and remedied by the Equity of that Statute.

2. The Want of the Bails being filed was not material, becauſe it might be that the Defendant was in *Cuſtod. Mar.* at the Time of the Plaintiff's Bill exhibited, according as the ſaid Bill ſuppoſed. *Hob.* 264. *Willis* v. *Woodhouſe.*

Actions on the Caſe for Wrongs.

This Action upon the Caſe for Torts or Wrongs, may be brought in the two following Inſtances.

Firſt, For a Damage wilfully done to the Property of another, or otherwiſe ariſing from the Diſturbance of a Perſon in the Enjoyment of his Rights and Privileges, which the Law takes all poſſible Care to preſerve and protect.

Secondly, For neglecting to do that which by Law, and the Rules of Juſtice one is obliged to do, whereby a Man receives a Damage, whether it be relating to his own Perſon or Property, or to the Perſons of thoſe in whom a Man has an Intereſt, and whoſe Welfare and Preſervation tends to his Benefit and Advantage.

Which two General Heads I ſhall reduce to the Three following Particulars.

First, **Nuſances and Annoyances.**
Secondly, **Diſturbances.**
Thirdly, **Negligence, and the Want of due Care of a Man's own Property.**

There is another Species of this Action for Wrongs, which ariſes from a Man's doing ſomewhat in ſuch an ill and unwarrantable Manner, as that by Law, and the rules of Juſtice, it ought to have been done in another Manner, and by ſuch Miſdoing the Party receives an Injury: But as this Title of Wrongs is more properly treated of in Actions to be brought againſt Perſons of any Trade, Art, Myſtery or Profeſſion, *&c.* the Reader is referred to that Title.

And I ſhall thereto add ſuch Actions as are to be brought, by and againſt Officers and Perſons in a publick Employment, all which are treated of in the following Manner.

First, **Where the Action lies, and by and againſt whom.**
Secondly **Of the Declaration.**
Thirdly, **Of the Pleadings.**
Fourthly, **Of the Trial, Evidence and Damages.**
Fifthly, **Of the Judgment and Execution.**

First, Where the Action lies, and by and againſt whom.

For Nuſances and Annoyances.

1. A *Nuſance* is that Injury which is done by one Man to another; either to his Houſe, Lands or Tenements; whereby he is obſtructed or annoyed in the Enjoyment of what he is poſſeſſed, or has a Right to the Uſe of, and may be either Common and General, or Special and Particular. If the *Nuſance* be of ſuch a Nature, that it is a Common and General Prejudice to all the King's Subjects, the proper Remedy is by Indictment, or Preſentment in the Court-Leet, and not by Action: If it be of a particular Nature, and any Man is particularly injured by the Erection and Continuance of ſuch *Nuſance*, the Party grieved may remove it himſelf, or bring this Action; but if he removes it himſelf, 'tis

ſaid he can't bring this Action; and if he removes it pending the Action, 'tis likewiſe held, that the Defendant in ſuch Action may plead that Matter in Bar; and if the Defendant is too late to plead it, he may have an *Audita Querela*. 9 *Co.* 55. 5 *Co.* 191. *F. N. Brev.* 185. *New Nat. Brev* 407, 408.

2. If the *Nuſance* be a Damage to a Man's *Freehold*, the Party grieved, or his Heir, or Feoffee, may have a *Quod permittat* againſt him that erected it, without any Notice or Requeſt before to abate it; and againſt the Heir or Feoffee of him that ſo erected it, after a Requeſt made to him to remove it. *New Nat. Brev.* 429. 5 *Co.* 101. 9 *Co.* 54. *Dyer* 313.

3. And this Difference is likewiſe taken in the Books, that if the Party grieved hath the *Freehold* in him, if he will not abate it himſelf, he muſt have an *Aſſize* of *Nuſance*; but if the Party grieved has but a Leaſe for Years, he muſt have this Action upon the Caſe. 5 *Co.* 73. 9 *Co.* 113.

4. Yet it was adjudged in the Caſe of *Cartwell* v. *Church*, in an Action to ſtopping up a Way, that tho' the Party grieved was entitled to an Aſſize, yet he may have an Action upon the Caſe. *And ſo the Law is.* *Noy* 97.

5. So in 3 *Leon. Leverett* v. *Townſend*, there an Exception was taken to a Declaration for Diſturbance of Common; That it appear'd the Plaintiff was ſeiſed in Fee, and therefore ought to have had an Aſſize, and not an Action upon the Caſe; but the Exception was diſallowed. 1 *H.* 4. 11. 8 *Eliz. Dyer* 250. 11 *R.* 2. Title *Action upon the Caſe*. See more concerning this particular Point in 1 *Rolll's Abr.* 164. Letter *L. per tot'*.

6. The Nature of a *Nuſance* is ſuch, that if 'tis Neceſſary and Beneficial to him who made it, and another buys the Land in which the *Nuſance* is made, in ſuch Caſe the *Nuſance* is purged; and if afterwards the Lands come into different Hands, 'tis not abateable; but if 'tis an unneſſary *Nuſance*, 'tis only a Suſpenſion thereof, while it continues in one Perſon; and when afterwards it comes into different Hands, 'tis abateable. *Carthew* 272. *Reynolds* and *Clarke*.

7. If *A.* ſtops up my Way, and lets the Land to *B.* an Action lies againſt *B.* if he does not remove it, becauſe he continues the Wrong. But if *A.* builds a Houſe, and lets it to *B.* in that Caſe *B.* cannot pull down this Houſe to lay open my Way; for this would be a Waſte in *B.* and therefore no Action lies againſt *B.* for not removing this, which is to me a *Nuſance*. *Trin.* 13. *Jac.* 1. *Bold's* Caſe.

8. *R.* brought an Action againſt *B.* and the Caſe was, that *R.* preſcribed to have a Light Time out of Mind to his Meſſuage whereof he was ſeiſed in Fee; and one *H.* was ſeiſed in Fee of Land adjoining, and he erected a Shed upon his Land, whereby he hindred the Light from coming to the Plaintiff *R.* and afterwards made a Leaſe for Years to the Defendant *B.* and the Plaintiff having brought an Action againſt *B.* for not removing this Shed; *it was held* that this Action would not lie, becauſe the Leſſee had done nothing, but continued it as he found it; and if he had abated it, an Action would have lain againſt him by his Leſſor, but the Plaintiff might have had an Aſſiſe againſt the Leſſor, or he might have ſtood upon his own Ground, and have thrown down the Shed. 1 *Roll's Rep.* 221. *Rippon* v. *Bowles*.

9. An Action upon the Caſe will lie for a Tenant at Will againſt another, who deſtroys his Common with Conies. *T. Jones* 5. *Timberley* v. *Graham*.

10. It lies for a Stranger coming upon Land where I have a Right of Common, and eating the Graſs, *&c.* by which I could not have my Common in ſo beneficial a Manner as I ought. *Crogate* and *Marys*. 9 *Co.* 111.

11. If a Copyholder in a Manor has Right of Common, and a Stranger digs Turf there, and carries it away, the Commoner may have an Action, tho 'not for the Digging and Carrying away the Turf, but for the Horſes and Carts coming upon the cuſtomary Lands, to the Prejudice of his Common. 1 *Roll's Abr.* 89. *pl.* 8.

12. So if *J. S.* hath Lands, near to the Lands of *J. D.* in which ſeveral Tenants have Common of Paſture, and *J. S.* ſtores his Lands with Conies, without a Grant or Preſcription, ſo that the Conies go into the Lands of *J. D.* and eat his Graſs there, ſo that the Commoners cannot have ſufficient Common for their Cattle; yet cannot a Commoner have an Action upon the Caſe againſt *J. S.* for when the Conies go out of his Land, into the Land of *J. D.* where the Commoners have a Right of Common, the Poſſeſſory Property of thoſe Conies are in *J. D.* who is Owner of the Soil, and the Commoners may kill them. *Hinſley* v. *Wilkinſon*, 1 *Roll's Abr. f.* 90. Letter *N. pl.* 9.

13. And here it will be worthy our Conſideration to obſerve, That the Bounds of all Actions muſt be obſerved; and there is this Difference between Treſpaſs and Treſpaſs on the Caſe, that the firſt is where the original Act was a Wrong in itſelf; and the other where Damages are conſequential to a lawful Act: As for Inſtance, for a Man to make a Dam on his Ground is lawful; but if by making it, the Water overflows his Neighbour's Ground, it then becomes unlawful; and an Action upon the Caſe will lie for it. Therefore where Treſpaſs was brought for entring into a Yard, and fixing a Spout on his own Houſe, and thereby caſting the Water on the Plaintiff's Stable, *per quod* the Walls of the Stable were rotted and ſpoiled, *ad dampnum*; it was held, that in this Caſe Treſpaſs would not lie for fixing a Spout to his own Uſe; but if the Plaintiff had any Damage thereby, he ought to bring an Action upon the Caſe. *Modern Caſes in Law and Equity* 272. *Reynolds* and *Clarke*.

So that from what has been ſaid, 'tis plain a Man may wilfully do a Damage to a Man, by obſtructing him from the Enjoyment of what he has a Right to enjoy; tho' in that wherein he is ſo obſtructed he may have no Property, or which may be the Property of him who obſtructs me, or may be the Property of another, or belonging to no Perſon whatſoever but to the King, and is for the Good of his Subjects, all which have equally a Right to enjoy it.

14. But if a Man be injur'd in the Enjoyment of that which he and all others have a Right to enjoy; as if he be diſturbed in the Uſe of a common Highway; or if a Ditch be made athwart the Way, ſo that he cannot paſs, yet ſhall he not have this Action upon the Caſe, but an Indictment muſt be brought for it; and the Reaſon of it is to avoid a Multiplicity of Suits, and therefore the Law has provided another Remedy, (to wit) a Preſentment in the Court-Leet. 1 *Roll's Abr.* 8. Letter *N. pl.* 1.

15. If the Lord of a Manor preſcribes to have the Parſon of the adjoining Church, to read divine Service in his Chapel every *Sunday*, for him and his Tenants, for Failure herein by the Parſon, the Lord can't maintain an Action; ſo if any publick Way is ſtopped, no Action will lie againſt him that doth it. But if it were a private Chapel for him and his Family; or in the other Caſe, if the Party had a particular Damage by the Stopping, he may maintain an Action. 1 *Cro.* 664.

16. And yet an Action was held to lie, where the Inhabitants of *Southwark* by Cuſtom, had a Watering Place for their Cattle, which was ſtopped by *J. S.* It was adjudged, that every Inhabitant might have an Action, for elſe they would be without Remedy, becauſe ſuch a *Nuſance* is not preſentable at the Leet. *Weſtbury* v. *Powell*, *Cro. Eliz.* 664.

17. And if a Man receives any Special Damage by a *Nuſance* which is General, yet he may have an Action for it; as if a Man lays Logs of Wood up and down in a Highway, and a Man riding there is thrown off his Horſe, and receives a Damage, he may have an Action. 1 *Roll's. Abr. f.* 8. Letter *N. pl.* 2.

18. So if a Man agrees with me, that I ſhall ſet the Outer Wall of my Houſe upon his Land, and do it accordingly, and afterwards the Party which granted me the Licenſe breaketh it down, if the Grant were by

Deed, I may have an Action of Covenant, and if by Deed Poll, an Action upon the Caſe. *Idid.*

19. If a Man poſſeſſes two Pieces of Land, and a Stranger has a Right to one of them, and the Poſſeſſor builds a Houſe upon this Land, Part of the Houſe ſtands upon one Piece, and Part on the other, the Stranger recovers his Piece of Ground, the other pulls down Part of the Houſe that ſtands upon his Part, the Stranger may have an Action upon the Caſe. *Pop.* 15.

20. If a Highway be ſo ſtopped, that a Man is delay'd in his Journey, and by Reaſon thereof he is dampnified and hinder'd in ſome important Affair, yet this is not ſuch a ſpecial Damage, for which an Action upon the Caſe will lie, but a particular Damage to maintain this Action; for a Crime otherwiſe indictable muſt be direct, and not conſequential: As for Inſtance, the Loſs of his Horſe, or by ſome corporal Hurt receiv'd in a Fall off his Horſe. *Paine* and *Patrick Paſ.* 2 *W.* & *M. Roll.* 43. *Carthew* 194.

21. The Caſe above-mentioned in *Carthew* is thus reported in 4 *Mod.* The Declaration was, that the Plaintiff was an Inhabitant in an antient Meſſuage in ſuch a Vill, and that there was an antient Ferry-boat kept there by the Owners thereof till the firſt Day of *May*, in ſuch a Year, after which Day the Defendant, who ought to keep it up did not; and that all People uſed to pay for their Paſſage, except the Inhabitants of *L.* of which the Plaintiff was one; but the Action was brought for not keeping up the Ferry, by which the Plaintiff loſt his Paſſage. The Defendants plead by way of Proteſtation, that there was no ſuch Cuſtom, &c. and that the Plaintiff was not an Inhabitant; and for their Defence they plead, that before the Exhibiting of the Bill, they erected a Bridge over the River, and that they maintain'd it at their Expence; and that the Plaintiff might have better paſt over that Bridge. The Plaintiff replies, that he was not permitted to enjoy the Liberty of paſſing over any Bridge, *ſecundum Conſuetudinem prædict' in Narratione prædict'*, &c.

It was held in this Caſe, that the Cuſtom was well alledged, both as to the Manner and Matter; 'tis true, all Cuſtoms muſt have reaſonable Beginnings, but it would be very difficult to aſſign a lawful Commencement for ſuch a Cuſtom as this, ſo it would be for the Cuſtom of Gavelkind or Burrough *Engliſh*, which are circumſcribed to particular Places; and ſince 'tis ſufficient to alledge a Cuſtom by reaſon of the Place where 'tis uſed, it may be as reaſonable in this Caſe to ſay, that there hath been an antient Ferry-boat kept in this Place, 'tis but only an Inducement to the Cuſtom, which did not conſiſt ſo much in having a Right to the Paſſage, as to be diſcharged of Toll.

This might have a lawful Beginning, either by a Grant of the Lord to the Anceſtors of the Defendant, or by the Agreement of the Inhabitants.

A Cuſtom alledged for all the Occupiers of a Cloſe in ſuch a Pariſh to have a Foot-way, &c. is not good; the Reaſon is, becauſe the Plaintiff ought to preſcribe in him who hath the Inheritance; but where a Thing is of no Neceſſity, and no manner of Profit or Charge in the Soil of another, but only a Thing in Diſcharge or for a Way to a Market, or to be quit of Toll; in ſuch Caſes, not only a particular Perſon, but the Inhabitants of a Vill may alledge a Preſcription. This may be as well alledged as a Cuſtom to turn a Plow upon another Man's Land, or a Fiſherman to amend his Nets there.

'Tis good as to the Matter, for 'tis only an Eaſement; 'tis like a Cuſtom alledged for a Gate-way, or Water-courſe; and for ſuch Things Inhabitants of a Vill, or all the Pariſhioners of a Pariſh, may alledge a Cuſtom or Uſage in the Place.

But as to the Plea in Bar, 'tis not good, becauſe the Erecting of a Bridge is but laying out a Way; 'tis a Voluntary Act, and no Man by reaſon of his own Act, can be diſcharged of what he is to do upon the Intereſt he hath in the Ferry.

If the Defendant had petitioned the King to deſtroy the Ferry, and not a Patent to erect a Bridge, and had brought a Writ *ad quod damnum*; and it had been found by Inquiſition to be no Damage to the People, then he might ſafely have built this Bridge.

But notwithſtanding the Plea is not good, yet the Plaintiff can have no Advantage of it, becauſe he can't have an Action on the Caſe for this Matter; for by his own ſhewing 'tis a common Paſſage, which is no more than a common Highway. Now for diſturbing him in ſuch a Paſſage, no Action on the Caſe will lie, unleſs he had alledged ſome particular Damage done to himſelf; for if he could maintain ſuch an Action, any other Perſon is entitled to the like; and this would be to multiply Suits, which the Law will not allow, but hath provided a more apt and convenient Remedy, which is by Preſentment in the Leet. 4 *Mod.* 294. 1 *Salk.* 12.

22. Tho' a Way be a common Highway, yet where a Man dug a Ditch, whereby the Plaintiff could not carry his Tithes, but was forced to go round about, whereby he was obliged to undergo a great deal of Labour and Pains to go round about; it was held a ſufficient Foundation for this Action. *T. Jones* 156, 157. *Hart.* v. *Baſſet.*

23. This ſpecial Damage to be received, for which an Action will lie, where a Damage is done to a Way or ſuch like, muſt be particular to the Party that receives it, and muſt be particularly ſet forth in the Declaration; as where the Plaintiff declared, that he was poſſeſſed of a Colliery, and that there was a Highway near, by which he uſed to carry his Coals, and that he had a certain Quantity of Coals dug ready for Sale; and that the Defendant dug a Colliery near his, and intending to draw away his Cuſtomers, and deprive him of the Profit of his Colliery, ſtopped up the ſaid Way, ſo as Carts and Carriages could not come to his Colliery; by which the Plaintiff loſt the Profit of his Colliery, and of his Coals for want of Cuſtomers. And all the Court agreed, That where an Action ariſes from a publick *Nuſance*, there muſt be a ſpecial Damage; for he that did the *Nuſance* is puniſhable at the Suit of the Publick; and to allow all private Perſons their Actions, without ſpecial Damage, would create an infinite and endleſs Number of Suits.

And it was ſaid by *Holt* and *Rokeby* Chief Juſtice *contra*, the Plaintiff's near Situation yields him a Convenience, but no Right; for it is in the King's Highway, for the equal Uſe and Benefit of all his Subjects; and the Plaintiff has no more, nor no better Right than any body elſe: And they held, a Man could not have a particular Action, without a particular Injury, or a particular Right, which are the Grounds upon which all Actions are founded, and to which they muſt conform. *Vide* 2 *Sand.* 115. *Cro.* 664. This Plaintiff had neither a particular Right in this Way, nor a particular Injury; for the Stoppage is common to every one as well as to him, and an Indictment is *ad nocumentum omnium ſubditorum per viam illam tranſeuntium.* And the Caſes cited on the other Side were founded on a particular Right.——As in Caſe for a Stoppage, where one has a Way, a Watercourſe, or Common to his Houſe, Mill or Tenement, there the Action is founded on a particular Right, and lies without the *per quod.*

They held, that ſuppoſing that was a particular Injury by ſpecial Damage, that ſpecial Damage is not ſufficiently ſet forth; for it is not ſufficient to ſay he loſt Cuſtomers, or Buyers could not come, without ſhewing Buyers were coming, and were hindred. *Vide* 2 *Lev.* 214, 233. And the Caſe in 1 *Roll* 53. has been often denied, and is not Law; for the Damage muſt be ſpecially ſhewn where Actions of themſelves are not actionable. 1 *Roll.* 58, 111. 1 *Cro.* 140. 1 *Roll.* 34, 35, 36. muſt ſhew who refuſed. And the Chief Juſtice cited the Caſe of *Paine* and *Partridge*, 2 *W. & M.*

in his Court, Caſe for not keeping of a Ferry-boat, which was for all the King's People, paying a Toll, but *gratis* for the Inhabitants of ſuch a Village, of which the Plaintiff was one; in this Caſe the Court held the Cuſtom to be good, but that the Action did not lie; for tho' the Plaintiff had a particular Right, yet that conſiſts in being exempt from Toll, and not in Paſſing, which is common to all; ſo that the not keeping the Ferry is a publick *Nuſance*, for which the Plaintiff cannot maintain an Action more than any other Perſon, but the Defendant muſt be indicted.

The Court being thus divided, and there being a former Rule to ſtay Judgment, no Judgment could be entered; & *per Cur.* if the Court had been divided on the firſt Motion, the Plaintiff might have entered Judgment, but now this Rule muſt ſtand or be diſcharged; and diſcharged it cannot be, becauſe the Court is equally divided. 1 *Salk.* 16. *Iveſon* v. *Moor*.

24. If a Man ſeized of a Waſte adjacent to a Highway, digs a Pit in the Waſte, within a little Space of the Highway, and the Mare of *B.* eſcapes into the Waſte, and falls into the Pit, and there dies, *B.* ſhall not have an Action againſt *A.* for making this Pit, becauſe the ſpecial Damage was by the Default of the Mare's eſcaping into the Waſte. 1 *Roll's Abr.* 8. Letter *N. pl.* 4.

25. If a Man anciently had Ponds repleniſh'd by Chanels out of a River, he cannot change thoſe Chanels, if thereby any Prejudice accrues to another, but he may have the Prefluxions of the River to feed his Ponds; But *ſic utere tuo ut ne lædas alieno. Het.* 31. *Duncombe* v. *Randall.*

26. If a Man ſets up a Wood-pile againſt my Houſe upon his own Ground, whereby my Lights or Proſpect is hinder'd, I may have this Action. 9 *Co.* 55.

27. The Plaintiff counted that he was ſeiſed in Fee of a Kitchin, in the Pariſh of St. *Dunſtan's* in *London*, and preſcribes to have Windows into the Backſide of the Defendant; and for ſtopping up a great Part of the Light, the Plaintiff brought the Action, and upon Not guilty pleaded, it was found for the Plaintiff. And it was moved in Arreſt of Judgment,

Firſt, That the Plaintiff did not ſhew that the Kitchin was antient, but it was reſolved that it was implied in the Preſcription; but *Williams* held this was not material, but *Crooke* was of a contrary Opinion; for by the Cuſtom of the City of *London*, the Light may be hinder'd, if it be not an antient Light.

Secondly, For that the Quantity was not ſhewed, and it was reſolved it was not Neceſſary. 4 *Co.* 49.

Thirdly, Neither ſhews he the Pariſh in which the Backſide was; that Objection was likewiſe not allowed, becauſe the Stopping of the Light was the material Point, and it was ſhewed where that was; and that was held ſufficient. *Ward* v. *Cheſhire*, *Mich.* 9 *Jac.*

28. *A.* had an antient Houſe in *London*, *B.* builds a new Houſe, which ſtop'd up the Light of *A.* And it was held. 1. That by the Cuſtom, a Man cannot erect a new Houſe where there was not one before, to ſtop up the Lights of the antient Houſe. 2. Upon an antient Foundation, a Man may erect a new Houſe, and ſtop up the antient Lights of his Neighbour; for by the ſame Reaſon as the Neighbour erected his Houſe more high, the other may at any Time erect his; but he cannot enlarge his own in Breadth or Length, to ſtop up the Lights of his Neighbour. 22 *H.* 6. 15. *Hill.* 9 *Jac. Hughes* v. *Keme. Telv.* 215. 1 *Bulſt.* 125.

29. So an Action was brought for ſtopping up Lights; and it was agreed by all the Juſtices, that if two Men be the Owners of two Parcels of Lands adjoining, and one of them doth build an Houſe upon his own Land, and makes Windows and Lights looking into the other's Land; and this Houſe, and the Lights have continued for the Space of 30 or 40

Years; yet the other may upon his own Land and Soil, lawfully erect an Houſe, or other Thing againſt the ſaid Lights and Windows, and the other can have no Action; for it was his own Folly at firſt to build his Houſe ſo near to the other's Land; and ſo it was adjudged upon this Maxim in Law, *Cujus eſt ſolum ejus eſt ſummitus uſque ad Cœlum.* 1 *Cro. Bury* v. *Pope.*

30. Where the Action was held to lie for erecting a Bakehouſe againſt the Bakehouſe of the Plaintiff. *Cro. Eliz.* 203.

31. See more likewiſe concerning this Action for a *Nuſance,* in 1 *Roll's Abr.* 8. Letter *N. per tot. Danv. Abr.* 172. Title *Nuſance.*

For Diſturbances, and other Violences committed againſt a Man's Property, &c.

1. If the Leſſor comes to the Houſe which he has demiſed, to ſee if there be any Waſte done, or if it be out of Repair, and is diſturb'd therein, an Action will lie for this Diſturbance. 2 *Cro.* 478.

2. An Action upon the Caſe will lie for a Tenant at Will againſt another, who deſtroys his Common with Conies. *T. Jones* 5. *Timberley* v. *Graham.*

3. An Action upon the Caſe lies for keeping a Man out of a Veſtry-room, ſo that he could not be preſent at the Electing a Pariſh Officer. *Modern Caſes in Law and Equity* 52. *Pillipbrown* v. *Ryland.*

4. If a Commoner be diſturbed in his Common he may have this Action. 9 *Co.* 112. 8 *Co.* 79.

5. If another's Cattle be in my Ground Damage-fezant, and a Stranger of his own Head removes them, ſo that I cannot diſtrain them as Damage-fezant, I may have this Action. *Finche's* Law 105. *New. Nat. Brev.* 232.

6. The Parſon may have this Action againſt one that diſturbs him in Taking his Tithe. 2 *Co. Inſt.* 650.

7. If I be bound to appear in a Court at ſuch a Day, and before, or againſt the Day, one cauſes me to be arreſted on Purpoſe, and out of Malice to prevent my Appearance, and to cauſe a Forfeiture of my Bond; I may have this Action for my Relief. Q. if the Action lies.

8. If one incloſes Common which ſhould be open, or feeds the Common, ſo that the Commoner can't enjoy his Common in ſo beneficial Manner as he ought, every Commoner may have this Action. 9 *Co.* 113.

9. If a Man is diſturbed in his Fair or Market in taking the Toll, he may have this Action. 9 *H.* 6. 45. *Vide* 21 *H.* 7. 16.

10. And if a Man has a Market by Preſcription, and another erects a Market to the Prejudice of his antient Market, the Party injured may have this Action. *Ray.* 195. *Tard* v. *Ford,* 1 *Lev.* 296. 22 *H.* 6. 14.

11. If a Man has a Seat in the Church by Preſcription, and is diſturb'd, he may have this Action. 1 *Lev.* 71. and that without ſetting forth that he hath always repair'd it.

12. If a Man ſeiſed of Lands in Fee, makes a Contract for a Leaſe for Years, and to deliver quiet Poſſeſſion to the Leſſee, and a Stranger diſſeiſes him, he may have an Action upon the Caſe, ſhewing this ſpecial Diſturbance. 2 *Roll's Rep.* 254. *Shotridge* v. *Hide.*

13. An Action upon the Caſe was brought by the Maſter of a Ship, ſetting forth, that he was detained in ſuch an Harbour ready to ſail for *Dantzick*; and the Defendant enter'd and ſeiſed the Ship, and detained the Ship, *per quod* he was obſtructed from making his Voyage; tho' it was objected that the Maſter had no Property in the Ship, yet it was held, that as he declared as a particular Officer, he ſhall recover for his particular Loſs, and he might have maintain'd an Action of Treſpaſs, as a Bailiff of Goods may. *Salk.* 10. *Pitts* v. *Gaince* and *Foreſight.*

This Action is likewiſe to be brought for other Violences to a Man's Property, that do not properly fall under either *Nuſances*, *Annoyances* or *Diſturbances*; as for Example.

1. The Leſſor ſhall maintain this Action againſt his Tenant at Will for a Voluntary Waſte. *Lit.* 15. *a.* 14 *H.* 8. 12. 5 *Co.* 13. *a.*

2. But not for Negligent or Permiſſive Waſte, becauſe he is not bound to repair. 8 *Co.* 13. *b.* *Salop*'s Caſe.

3. So hath it been held not to lie againſt a Leſſee at Will, for negligently keeping his Fire, whereby the demiſed Premiſſes were burnt. *Panton* v. *Iſham*, 3 *Lev.* 359. *Hicks* v *Downing*, 1 *Salk.* 13.

4. But it will lie by the Leſſee for Years againſt his Under-Leſſee, becauſe the Leſſor himſelf is chargeable to his Prior Leſſor, by Reaſon of conſequential Damages; but why he, that hath the Inheritance, can't have it againſt the Leſſee at Will, is becauſe it was his own Folly, that he would not reſtrain the Leſſee from permiſſive Waſte by proper Covenants; and if the Leſſee for Years ſhould not have his Action againſt his Leſſee, he would be without Remedy. 4 *Mod.* 9, 10, 11. *Cudlip.* v. *Randall.*

5. Leſſee for 20 Years of a Houſe, made a Leaſe for Half a Year to *J. T.* and after the Term ended, and before any Entry by the Leſſee, *J.* takes away the Planks, and other Things from off the Premiſſes that were fixed to the Freehold; and the Leſſee for 20 Years brought an Action upon the Caſe againſt *J. T.* and it was held to lie. *W. Jones* 224. *Weſt.* v. *Trefuſie.*

6. See where this Action hath been held not to lie, for the Father for beating his Son, and making him Lame, whereby he loſt his Marriage. *Cro. Eliz.* 55. *Gray* v. *Jefferies.*

7. This Action will lie for him in Reverſion againſt a Stranger for Damages done by Fire, tho' there be a Term in *Eſſe*. *Panton* v. *Iſham*, 3 *Lev.* 360. 1 *Salk.* 19.

8. After a Bond was ſealed and deliver'd, *A.* without the Conſent of the Obligor, filled up ſome blank Places, whereby the Bond became forfeited and void, an Action was held to lie for this againſt *A.* *Moor* 547.

9. It was adjudg'd that an Action would lie for a Parſon againſt his Predeceſſor for Dilapidations. 3 *Lev.* 268. *Jones* v. *Hill.*

10. It was adjudg'd that it would lie againſt a Man for retaining another's Servant, without laying any Inticement, the Defendant having Notice that it was the Plaintiff's Servant. 2 *Lev.* 63. *Fawcett* v. *Beavers* and his Wife, 3 *Keb.* 59.

11. That this Action will lie for the Plaintiff in the Action againſt a Reſcuer. *Hetley* 95. *Kynne* v. *Conningham.*

12. This Action will lie for keeping a Dog accuſtom'd to bite Sheep. See *Danvers*'s Abridgment, *fol.* 19. Letter *H.* *pl.* 1. *per tot'*.

13. But it was held that this Action will not lie for a Man's Dog running at Sheep, tho' he kills them, if it be without his Conſent. *Baker* v. *Weberley*, *Hetley* 171.

For Negligence, and the Want of due Care of a Man's own Property.

This Species of the Action upon the Caſe ariſes from various Inſtances of Neglect; as for want of repairing a Man's own Property, for negligently keeping a Fire, which for want of due Care does a Damage to his Neighbour, and ſuch like. For here 'tis not improper to take Notice, that all Men of this Kingdom conſider'd as Members of one Social Body, which together conſtitute the Commonwealth, are ſo link'd together, that all their Actions ought, and if rightly done, virtually do preſs towards the Support and Preſervation of the Whole; and therefore whereever a Link is broken, which thus binds together the ſeveral Members of this Commonwealth, by the depraved, or too ſelfiſh Actions of any of the Members of that Society, there is, and always ought to be Laws for the giving a Remedy to the Miſchiefs that ariſe from ſuch pernicious Principles; from whence it may be concluded, that each Man's Property, (when conſider'd with Regard to Society) is from the Frame and Conſtitution of Things, ſo far founded and created, for the Benefit of Society, that he himſelf has not ſuch an abſolute Ownerſhip therein, and Power over it, as that he may permit it to be out of Repair, or to want ſuch due Care and Preſervation, as that by the Neglect thereof his Neighbour receives an Injury. To illuſtrate which the following Caſes are in Point.

1. This Action will lie againſt a Man for not ſcouring his Ditch, by which another's Land is over-flown with Water. *Fitz. Nat. Brev.* 88. 39 *H.* 6. 32. 11 *H.* 4. 82. 14 *H.* 8. 31.

2. So in like Manner it lies for ſtopping a Ditch, by which another's Land is ſurrounded. *Ibid.*

3. It lies againſt a Man that ought to repair a Mound or Bank, by which another's Land is drown'd. 29 *Ed.* 3. 32. 10 *H.* 4. 7. *Natura Brevium* 99.

4. It lies for not repairing a Bridge, by which I have a Way to my Manor. 11 *H.* 4. 82. 45 *E.* 3. 17.

5. In like Manner it lies againſt one who ought to incloſe againſt me, and does not, by which my Graſs is conſumed. 11 *Rich.* 2. Action upon the Caſe 36. and that whether it be by his own Cattle or a Stranger.

6. And it lies againſt one who neglects to repair his Houſe, for want of which it is ready to fall upon my Houſe. 20 *H.* 7. 98. *pl.* 4. So that it lies ſometimes where a Man is like to ſuffer Damage by way of Prevention of the Wrong.

7. It lies againſt one that bought or ſold in my Market or Fair without paying Toll. 7 *H.* 4. 44. Inaſmuch as this tends to my Loſs, and is an Ill Example to others.

8. It lies againſt one that will not deliver my Pledge upon a Tender of the Money borrowed. *New Natura Brevium* 86.

9. It lies againſt a Feoffee to a Uſe, who doth not plead according to the Directions of the Feoffor. 14 *H.* 8. 24. *pl.* 2. *Sed quære de hoc*, ſince the Statute of Uſes which Executes the Poſſeſſion to the Uſe.

10. An Action lies for a Pariſhioner againſt the Parſon for not carrying away his Tithes, but ſuffering them to continue upon the Land after Notice. *Palmer* 341. *Wiſeman* v. *Denham.*

11. An Action lies for a Pariſhioner againſt the Parſon, for not keeping his Bull according to the Cuſtom of the Pariſh. *Moor* 355. *Teilding* v. *May.*

12. So an Action will lie for the Vendor againſt the Vendee, for not removing of Hay after it is ſold. 13 *H.* 4. 48. *Palmer* 381.

13. An Action upon the Caſe was brought upon the Cuſtom of the Realm, charging the Defendant, that he ſo negligently kept his Fire in his own Cloſe, ſo that by the Flames the Plaintiff's Corn was burnt in his Cloſe; and after a Verdict, it was objected that the Cuſtom extends only to fire in a Man's own Houſe or Curtilage; but that Objection was not allowed of, for the Fire in a Man's Field, is as well his Fire, as that in his Houſe; and as he made it, he muſt ſee that it does no Harm, and anſwer the Damage if it does; for every Man muſt uſe his own, ſo as not to hurt another. But if a ſudden Storm had riſen which he could not avoid, that had been Matter of Evidence, and the Plaintiff had his Judgment. *Turbervil* v. *Stamp.* 1 *Salk.* 13.

14. *J. S.* with a Gun at the Door of his Houſe ſhoots at a Foul, and by this fireth his own Houſe, and the Houſe of his Neighbour; upon which he brings an Action of the Caſe generally, and doth not declare upon the Cuſtom of the Realm, as 2 *H.* 4. *viz.* for negligently keeping his Fire.

The Queſtion was if this Action doth lie, and all the Court held it did, for the Injury is the ſame, altho' this Miſchance was not by a common Negligence, but by a Miſadventure; and if he had counted upon the Cuſtom of the Realm, as in 2 *H.* 4. the Action had not been well brought; Yet *Conſuetudo Regni eſt Communis Lex.* 1 *Cro.* 10.

15. An Action lies againſt a Man, if his Fire by Misfortune burns the Goods of another. 1 *Roll's Abr. f.* Letter *B. pl.* 1. So if it ſuddenly break out of his Houſe, and burn the Houſe of another, tho' he does not know it. *Ib. pl.* 2. So if done by my Servant. *Ib. pl.* 3. *Poph.* 143. So if done by another entring my Houſe by my Leave, *pl.* 4. So if by my Knowledge, *pl.* 5. Otherwiſe if by a Stranger, *pl.* 6. It lies not againſt a Man and his Wife for the Negligence of the Wife, becauſe the Action lies againſt the Husband as *Pater Familiæ. Ib. pl.* 7.

By and againſt whom this Action is to be brought.

1. In an Action upon the Caſe for a *Nuſance* erected; it was reſolved *per totam Curiam*, That where a *Nuſance* is made to the Land of two Tenants in Common, that they ſhall join in an Action; for it is perſonal, and concerns the Profits of the Land; and as they ſhall join in Treſpaſs, ſo they ſhall join in this Action, but in forging a falſe Deed they ſhall ſever, for that concerns the Inheritance of the Land. It was alſo held, that for a *Nuſance* erected in the Name of the Deviſor, and continued afterwards, (as this Caſe was) the Deviſee ſhall join in the Action, for the Continuance thereof, is as the new Erecting of ſuch a *Nuſance.* 2 *Cro.* 231. *Some* v. *Barwiſh.*

2. Where it was held to lie againſt the Leſſee for Years, for continuing a *Nuſance. Brent* v. *Hadden,* 2 *Cro.* 373. *Rippon* v. *Bowles,* where the Opinion of three Judges againſt one was to the Contrary.

3. Where it was held to lie againſt the Maſter, for the Improvident driving a Coach by the Servant, without laying that the Maſter knew the Horſes were rude or ungovernable. 2 *Lev.* 172. *Mickel* v. *Aleſtree.* 3 *Keb.* 650.

4. Each Inhabitant of a Pariſh may have an Action for a Diſturbance of a Way to the Church. 3 *Keb.* 28. ſaid by *Hales* in the Caſe of the *King* v. *Thrower.*

5. Where it lies by the Maſter againſt the Servant for abuſing his Coach in driving it. 2 *Keb.* 16. *Cotes* v. *Sadler.*

6. Whether it may be brought by one Partner of a Ship againſt the other, for ſelling a ſixteenth Part. 1 *Keb.* 38. *Graves* v. *Saucer.*

7. Where it was held to lie for a Commoner, for Diſturbance of his Common. 9 *Co.* 112. *Crogat* v. *Marys.*

8. Where the Husband claims Common by Reaſon of his Wife's Land, and is diſturbed, he alone ſhall bring the Action. 2 *Bulſt.* 14. *Baker* v.—

9. Whether an Action for Diſturbance of Common will lie by a Tenant at Will. *T. Jones* 5. *Timberley* v. *Graham How.* 1 *Ven.* 274, 319. 2 *Ven.* 138, 185, 288, 290. 3 *Leon.* 206. 2 *Lev.* 148, 214, 233. 5 *Mod.* 206. *Salk.* 594.

10. The Plaintiff alone brought an Action on the Caſe againſt the Defendant, and ſets forth, that he and his Wife in her Right, was ſeiſed of a Meſſuage, Bakehouſe, and Coal-yard, *&c.* and that the Defendant had erected two Houſes of Office near the ſaid Bakehouſe, that the Walls became ſo foundrous, and the Air ſo unwholſome, that he loſt his Cuſtom; and that the Defendant had digged a Pit ſo near the Coal-yard, that the Walls thereof were in Danger of falling; and that he had built another Wall ſo near the ſaid Meſſuage, that he had ſtopped an old Light therein; upon Not guilty pleaded, there was a Verdict for the Plaintiff; the Court held, that where the Action (if not diſcharged) ſhall ſurvive to the Wife, they ought both to join; which if they had

done here, 'twould have been hard to have maintained this Action, becauſe intire Damages are given; and for loſing this Cuſtom to this Bakehouſe, the Husband alone ought to have brought the Action; he may bring an Ejectment of the Lands of his Wife, but here Judgment was ſtaid till mov'd on the other Side. 2 *Mod.* 269. *Froſdict* v. *Sterling*.

Other Inſtances wherein this Action for Wrongs hath been held to lie, and where not, relating to the following Particulars.

Cro. Eliz. 574. *Willis* v. *Stroude.* For ſuing out a *Capias ad ſatisfaciendum* after a Writ of Error.

Cro. Eliz. 628. *Baron* v. *Sleigh.* For ſuing out a *Sci. fa.* againſt the Plaintiff as Bail for *A. S.* whereas he was not ſo.

Cro. Eliz. Shelborn v. *Harriſon.* For procuring inſufficient Bail.

Cro. Eliz. 836. *Bray* v. *Patrid.* Suing for Tithes before received.

Cro. Eliz. 838. *Kenton* v. *Wallinger.* For inſerting the Plaintiff's Name in an Inſtrument of Excommunication.

Cro. Eliz. 659. *Harvey* v. *Newlyn.* For a Diſturbance of the Plaintiff in his Office of Bailiff to a Manor.

1 *Ven.* 295. *Anonymus.* For a Damage receiv'd by the Plaintiff's Horſe.

1 *Ven.* 98. *Sand* v. *Ford.* For erecting a new Market.

3 *Cro.* 187. *Weſt* v. *Trende.* By the Leſſor at Will againſt his Leſſee, for pulling down the Windows, *&c.* of his Houſe.

3 *Cro.* 254. *Boulton* v. *Banks.* For keeping a Dog accuſtom'd to bite Swine.

2 *Cro.* 567. *Garrett* v. *Taylor.* For threatning the Plaintiff's Workmen, ſo that they would not work.

2 *Cro.* 601. *Eyres* v. *Sedgwick.* For making an Affidavit in a Cauſe, charging the Plaintiff with a Reſcue.

3 *Cro.* 387. *Hinſley* v. *Wilkinſon.* For erecting Coneyburroughs in a Neighbouring Wood.

3 *Cro.* 499. *Anonymus.* For diverting a Water-courſe.

2 *Cro.* 265. *Lewſon* v. *Kirke.* For not paying the Duty for the Plaintiff's Goods, whereby they became forfeited.

2 *Cro.* 478. *Hunt* v. *Dowman.* For diſturbing the Plaintiff as Leſſor, in coming into a Houſe to ſee if there was any Waſte.

2 *Cro.* 373. *Ryppon* v. *Bowles.* For the Continuance of a Nuſance by the Leſſee.

Stile 164. *Ayre* v. *Pinchcomb.* By a Commoner for ſurcharging of Common, and treading the Graſs, *&c.*

Stile 3, 201, 202. *Watſon* v. *Norbury.* An Action brought for procuring a Commiſſion of Bankruptcy to be taken out againſt the Plaintiff, by Virtue of which the Defendant broke open the Plaintiff's Houſe, and took his Goods, *&c.*

Stile 398. *Norton* v. *Jaſon.* Where an Action was held to lie for the Plaintiff againſt the Defendant for aſſaulting his Daughter, and getting her with Child, *per quod* the Plaintiff *ſervitium Filiæ ſuæ amiſit*; after an Action brought by the Daughter, or ſhe barr'd by the Statute of Limitations.

Stile 427. *Jones* v. *Graves.* Adjudged, that a Man may bring an Action upon the Caſe, for entering upon the Poſſeſſion of a Term, after the Plaintiff had recover'd it by a Verdict.

Stile 230. Sir *Anthony Aſhley Cooper* v. Sir *John*——Where the Plaintiff ſhall have it in his Election to bring this Action, or an Action of Treſpaſs. See the Caſe before this.

Stile 99, 100. *Anonymus.* Where it was adjudg'd, that a Man might bring an Action of Treſpaſs, or on the Caſe, for a Reſcue.

Stile 214. *Syms* v. *Wilſon.* That this Action lies upon the Statute of Monopolies.

Whether it lies for printing, upon a Suggeſtion, that the Plaintiff had a Patent for the ſole Printing of ſuch and ſuch Books. Earl of *Yarmouth* v. *Darell*. 3 *Mod.* 75.

2 *Lev.* 196. *Virtue* v. *Bird*. For not appointing a Place where the Defendant ſhould unload his Timber, whereby the Horſes of the Plaintiff in the Cart took cold.

3 *Keb.* 753. the Earl of *Salisbury* v. *Selby*. For removing a *Deodand* out of the County.

3 *Keb.* 710. Adminiſtrator of *Calthorp* v. *Waymans*. By a Patentee of an Engine.

1 *Keb.* 577. *Hill* v. *Kirkman*. For breaking a Wall, and making an open Way between the Plaintiff's Houſe, and the Street.

3 *Lev.* 209. *Biddlesford* v. *Onſlow*. For diverting a Water-courſe brought by him in Reverſion.

Moor 449. *Beſwick* v. *Comeden*. Where this Action was held not to lie, but a *quod permittat* for erecting a Pier in a River.

Noy 84. *Haman* v. *Whitbow*. Where the Action was held not to lie for a Tenant in Common for Diſturbance.

Godb. 160. *Anonymus*. Where for Diſturbance of Common.

Dyer 248. Whether this Action, or an Aſſiſe, will lie for diverting a Water-courſe.

Keb. 553. *Palmer* v. *Heſtier*. Whether the Action will lie for the Leſſee, againſt another Leſſee of the ſame Leſſor, for hindering the Light, *&c.*

Of Actions againſt Officers, for the undue Execution of their reſpective Offices.

Where this Action lies, and againſt whom it may be brought.

1. An Action upon the Caſe was brought for refuſing to admit an Attorney into a Court that was held by Preſcription; where the Plaintiff alledged that he was elected by the Mayor, who had the Election for 200 Years and more; and it was held good. *Jones, Car.* 2. 145.

2. If one is committed upon an erroneous Indictment, and the Judgment is reverſed or ſet aſide, no Action will lie againſt the Judge or Officer. *Mod. Rep* 119.

3. An Action upon the Caſe will lie againſt an Under-Steward of a Court-Baron, for proceeding in a Cauſe after a *Habeas Corpus* delivered to him. 3 *Leon.* 99.

4. An Action upon the Caſe will lie againſt the *Cuſtos Rotulorum*, for an Amendment in a Record, tho' there be no Neglect in him, for he is at his Peril obliged to preſerve all the Records in his Cuſtody. 1 *Lev.* 64.

5. If an Action upon the Caſe will lie againſt a Juſtice of Peace, for refuſing to examine one robbed according to the Statute of Hue and Cry. *Vide* 1 *Leon.* 124.

6. An Action will lie againſt the Under-Sheriff, as well as the Sheriff, for not returning a Writ. 1 *Leon.* 99.

7. When it lies againſt the Sheriff, and when againſt the Gaoler. *Hardr.* 30, 31.

8. If the Sheriff arreſts a Man outlaw'd, and he returns a *Cepi Corpus*, and ſuffers him to eſcape, an Action upon the Caſe lies againſt the Sheriff, and the Plaintiff ſhall recover Damages to the Value of the Debt. *Moor* 641. *Evans* v. *Williams*.

9. Where it was held to lie againſt the Sheriff by the Plaintiff, *qui tam pro Domino Rege quam pro ſeipſo*, for an Eſcape upon an *Outlawry*. *Parkurſt* v. *Powell*, 2 *Cro.* 532.

10. It lies againſt the Sheriff that will not return an *Outlawry*, 42 *Aſſize* 12. for tho' it properly concerns the King, yet the Party may receive Prejudice thereby.

11. An Action was brought againſt the Sheriffs of *London*, for not levying Goods by Virtue of an *Outlawry*; and the Opinion of the Court was, that the Action would not lie for the Party who ſued out the *Outlawry*, for the Seizing of the Goods, is to the King's Uſe; but if it had been ſhewn, that the Sheriff might have taken the Perſon outlaw'd, and neglected it, there might be more Reaſon to ſupport the Action. 2 *Ven.* 89. *Dawſon* v. the Sheriffs of *London*.

12. Whether an Action will lie againſt the Sheriff for a falſe Return upon an *Outlawry*, and in what County. *Hob.* 209. *Parkhurſt* v. *Powel.* So for not returning the Outlawry. 1 *Cro.* 873. Clerk's Caſe.

13. If I deliver a Writ to the Sheriff to be executed, and before the Party is arreſted, I command the Sheriff to diſcharge him of the Suit; if the Sheriff, notwithſtanding ſuch Command, will arreſt the Party, he may have an Action of falſe Impriſonment againſt the Sheriff. 2 *Cro.* 380.

14. So if the Sheriff arreſt the Party and after there comes a *Superſedeas*, and he ſtill detains him; the Detaining him is a falſe Impriſonment. 2 *Cro.* 379.

15. It doth not lie againſt the Sheriff for returning a *Cepi Corpus & paratum habeo*, tho' the Party does not appear. 2 *Mod.* 85.

16. If a Writ be directed to ſix Coroners, and deliver'd to one of them, and the Defendant in the Writ is in his Preſence; if he returns *Non eſt inventus*, the Action lies againſt all the ſix Coroners. 3 *Mod.* 23. *Naylor* v. *Sharpleſs*.

17. Whether an Action upon the Caſe will lie againſt the Sheriff for a double Return upon an Election of a Member of Parliament; it was adjudged by five Judges againſt two, upon a Writ of Error in the Exchequer Chamber, that it would not. *Barnardiſton* v. *Soame*, 2 *Lev.* 114. *Pol.* 470. 2 *Ven.* 37. *Onſlowe*'s Caſe.

18. But ſee an excellent Argument of my Lord Ch. Juſt. *Holt* upon that Occaſion, *Mod. Caſes* 45. *Aſhby* v. *White*; three Judges were of Opinion againſt the Plaintiff, my Lord Ch. Juſtice's Opinion for him; and the Judgment of the Court was reverſed by the Houſe of Lords. 1 *Mod.* 85. 2 *Lev.* 69. 2 *Keb.* 866. 3 *Keb.* 72, 112, 135.

19. Where it was held to lie againſt the Sheriff for executing Writs in a Liberty without a *Non omittas*. *Atkins* v. *Clarke*. 1 *Ven.* 399. 1 *Lut.* 82. *Prideaux* v. *Morrice*.

20. An Action will lie againſt the Mayor and Aldermen, and the Sheriffs of *London*, for a falſe Certificate of a Cuſtom, but not againſt the Recorder. *Hob.* 87.

21. An Action was brought by an Executor againſt the Sheriff, for a falſe Return of a *Fieri facias* in the Life-time of the Teſtator; and it was held to be within the Statute of 4 *E.* 3. *cap.* 7. whereby it was enacted, that Executors ſhall have an Action for Wrong done to the Teſtator. 1 *Salk.* 12 *Williams* v. *Crey*, 4 *Mod.* 403.

22. If the Ordinary admits a Clerk contrary to the Verdict in a *Jure Patronatus*, the Patron, after a Recovery againſt the Uſurper and his Incumbent, may have an Action upon the Caſe againſt the Ordinary. *Hob.* 317, 318.

23. An Action was brought againſt the Defendant; for that upon a *Capias* directed to him againſt *J. S.* he being Sheriff of *Eſſex*, directed his Warrant to a Bailiff of a Liberty, to arreſt the ſaid *J. S.* who did ſo; and the Defendant well knowing it, return'd a *Non eſt inventus*; the Court held the Action would well lie, but if the Sheriff in this Caſe had returned, that he had ſent to the Bailiff of the Liberty, who had given him an Anſwer, that he had arreſted the Body, it had been a good Diſcharge to the Sheriff, and Proceſs ſhould have iſſued to the Bailiff of the Liberty to bring in the Body. 1 *Cro.* 729. *Hawkins* v. *Mildmay*.

24. Tho' a Plaintiff may bring an Action of *Debt* for an *Eſcape* of one in Execution, yet he hath his Election to bring an Action upon the Caſe. *Hertford* v. *Gernon*. 1 *Cro.* 767.

25. An Action of Eſcape was brought where the Plaintiff declared, that the Defendant arreſted a Man upon a *Latitat*, and afterwards ſuffer'd him to go at large.

The Defendant pleaded the Statute of 23 *H.* 6. *cap.* 10. and that he took good and ſufficient Bail within the County according to the Statute.

The Plaintiff replied, that he let him go at large; *abſque hoc*, that the Defendant took good and ſufficient Bail within the County; upon a Demurrer the Court held, that this Action would not lie; and *North* Ch. Juſtice ſaid, that the Common Law was very rigorous as to the Execution of the *Proceſs*; the *Capias* was *ita quod habeas* the Body of the Defendant at the Day of the Return, and if the Sheriff had arreſted one it had been an Eſcape. But this Statute was made for the Benefit of the Priſoner, and the Sheriff is compelled to admit him to Bail, and he is a Judge of their Sufficiency, and therefore no Action will lie if they prove Inſufficient; and ſee an excellent Argument on this Occaſion, in 2 *Mod.* 180. *Ellis* v. *Yarborough*.

26. An Action will lie againſt the old Sheriff, for not delivering over a *Superſedeas* to the new Sheriff, whereby the Defendant in the original Action was taken in Execution. 1 *Mod.* 222. *Calthrop* v. *Phillips*. 2 *Mod.* 217.

27. Caſe lies not againſt the Sheriff, for not returning a *Cepi Corpus & paratum habeo*, tho' the Party doth not appear; if the Sheriff pleads the Statute of 23 *H.* 6. for taking Bail. 2 *Mod.* 83. *Page* v. *Tulſe*. So if he returns *languidus in priſona*. 1 *Cro.* 852. *Boles* v. *Laſcells*.

28. An Action of Eſcape was brought againſt one, for ſuffering the Defendant to eſcape, the *Proceſs* was in an Inferiour Court, upon a Bond not made within the Juriſdiction of the Inferiour Court, and therefore it was adjudged to be no Eſcape. *Squibb.* v. *Holt*, 2 *Mod.* 29.

29. It lies againſt a Gaoler that ſuffers one to eſcape taken upon a *Capias*, or a *Statute Merchant*, by the Conuzee of the Statute, at whoſe Suit the Proſecution is. *New Nat. Brev.* 211.

30. It lies againſt the Sheriff that ſuffers one to eſcape upon a *Capias ad computandum*, for he ſhall not have an Action of Debt, becauſe there is no Duty certain. 15 *E.* 4. 19. 16 *Ed.* 4. 2, 3. *New. Nat. Bre.* 211.

31. It lies againſt the Sheriff, for making another Return than the Bailiff of a Liberty made to him. 36 *H.* 6. 1. 30 *Aſſize*. 5 *New Nat. Brev.* 211.

32. It hath been ſaid to lie againſt him, for returning a Perſon upon the Inqueſt, that is privileged by a Charter. 19 *H.* 8. 5. But ſee *poſtea pl.* 37, 47. where it appears this is not Law.

33. It lies againſt the Sheriff, for returning Cattle eſtray'd that are dead. 32 *H.* 6. 27.

34. It lies againſt the Sheriff for returning a *Devaſtavit* where there was none. 11 *H.* 6. 37. *b.*

35. An Action upon the Caſe was brought againſt the Sheriff, who returned to a *Latitat*, that he had taken the Body, and had the Body ready, &c. whereas in Truth he had not the Party, whereby the Paintiff loſt his Suit; the Defendant demurred, and it was adjudg'd for the Plaintiff; for by the Demurrer he has confeſs'd the falſe Return, and the Plaintiff's Loſs; but if he had pleaded the Statute of 23 *H.* 6. it would have been a good Bar. *Moor* 428. *Laughton* v. *Gardiner*.

36. An Action upon the Caſe was brought againſt the Defendant, who was Bailiff of *Northampton*, and received a Warrant upon a *Fieri facias*, to be executed within that Vill, which bore Teſte *tres Trin'*, returnable *Octabis Mich'* (*which at that time of Day was a Return*) and at *Michaelmas* he was removed from his Office of Bailiff, and yet made a Return for the Sheriff in his Name and the Name of his Companion, that the Defendant had no Goods or Chattles, &c. upon which the Sheriff returned the

Writ, a *Mandavi Ballivo qui illi nullum dedit reſponſum*; and the Plaintiff ſurmiſed that this was a falſe Return, and this Matter being found by a ſpecial Verdict, it was adjudged for the Defendant; for the Return, altho' it be falſe, yet it was no Return, becauſe it was made by one that was not an Officer at the Return of the Writ; but if he had executed the Writ before *Michaelmas*, and return'd it to the Sheriff, the Sheriff might have made a Return accordingly; altho' the Bailiff was remov'd before the Return of the Writ, but as he did not execute it, and was removed before the Return of the Writ, he could not make a Return of the Writ to the Sheriff, that the Defendant had no Goods, *&c.* becauſe it might be he had none at the Time when he was an Officer, and perhaps he might have ſome after his Removal, and before the Return; but the Court held, that if the Plaintiff had brought an Action againſt the Bailiff, and laid the Ground of his Action to be for his Neglect in not executing the Writ; it had been good, and the Court likewiſe held, that an Action would have lain againſt the Sheriff, for making the Return of a Bailiff, who was no Bailiff at the Time of the Return, and for the Sheriff's not executing the Writ; and they held clearly that an Action was maintainable againſt the Bailiff of a Franchiſe for a falſe Return, and not againſt the Sheriff. *Moor* 431, 432. *Palmer* v. *Porter*.

37. If a Sheriff or Bailiff, upon the Delivery of Cattle to the Plaintiff in *Replevin* takes no Sureties, or Money in lieu thereof, the Action lieth againſt him. 3 *Cro.* 446.

38. A Gaoler takes from the Bailiff a Perſon arreſted out of his Juriſdiction, *Q.* if an Action of falſe Impriſonment will lie againſt the Gaoler. *Raym.* 468.

39. If one has a Privilege not to ſerve as a Juror, and the Sheriff ſummons him on the Jury, no Action lies againſt the Sheriff for ſo doing. 1 *Syd.* 244.

40. If a Judge commits a Juryman for giving a Verdict againſt Evidence, tho' this Commitment be illegal, yet no Action lies againſt the Judge. 2 *Mod.* 29.

41. An Action was brought againſt an Attorney for entring up a Judgment before the Rules were out, by which he was prevented of moving in Arreſt of Judgment; and it was adjudg'd to lie. *Ray.* 164.

42. An Action will lie againſt a Sheriff, for not executing a Writ when he might. *Mo.* 432.

43. An Action will lie againſt the Bailiff of a Liberty for concealing his Warrant, and not certifying what is done upon it. 1 *Roll's Rep.* 178.

44. It will lie againſt a Summoner, for returning one ſummoned, by which the Party is excommunicated, when he was not ſummoned at all; or againſt the Archdeacon for not inducting, but not againſt the Ordinary, for not inſtituting; for he may have his *Quare Impedit*. *Moo.* 835. *Poole* v. *Godfrey*.

45. An Action lieth not againſt a Sheriff for taking inſufficient Bail, he being a Judge thereof. *Hutt.* 120. *Antea pl.* 23.

46. If by the Cuſtom of a Manor, a Copyholder for Life is to Name his Succeſſor, and the Copyholder according to the Cuſtom names his Succeſſor, who after the Death of the Copyholder comes to the Lord, and prays to be admitted, and the Lord refuſes him, yet no Action will lie againſt the Lord. 2 *Cro.* 368. 1 *Roll's Rep.* 125. *Moor* 642.

47. It lies againſt a Bailiff for concealing a *Fieri facias*, after that he hath levied the Money thereon. *Bell* v. *Catesby*. 1 *Roll's Rep.* 78.

48. It lies not againſt the Sheriff, for returning a Man upon the Jury, who lives in a Place exempt from that Duty. 1 *Roll's Rep.* 119. The Town of *Darby* v. *Foxley*.

49. It lies againſt the Ordinary for not inducting the Clerk. 1 *Roll's Rep.* 125. Cited in the Caſe of *Ford* v. *Hopkins*.

50. It lies not againſt the Lord of a Manor, for him who is named by the Copyholder to be his Succeſſor. 1 *Roll's Rep.* 195. *Forde* v. *Hoskins.* *The ſame Caſe.*

51. It lies not for not Attorning Tenant, or for not making Livery, or for any ſuch Matter which is *Dampnum ſine Injuria.* 1 *Roll's Rep.* 196. *The ſame Caſe.*

52. It lies againſt a Judge of an Inferior Court, for refuſing a Plea, which by Law he ought to accept of. 2 *Roll's Rep.* 498. *Curriton Killigrew.*

53. Where it was held to lie againſt the Mayor of *L.* for not granting a Poll upon a doubtful Election. 1 *Ven.* 206. *Sterling* v. *Turner.* 2 *Ven.* 26. 2 *Keb.* 26.

54. Whether it lies againſt an Alderman, for procuring a falſe Return of a *Mandamus.* 3 *Keb.* 859. *Enfield* v. *Hills.*

55. It lies againſt a Sheriff that will not execute *Proceſs*, the Party being ſhewed to him, for Juſtice is thereby delay'd. 14 *H.* 7. 23. 8 *E.* 4. 14, 17.

56. It lies for the Plaintiff againſt the Sheriff, that will not return his Writ. 2 *H.* 6. 5. 8 *E.* 4. 14, 7. for he is thereby hinder'd in his Suit.

57. It lies by the Maſter of a Servant againſt the Gaoler, that ſuffers one to eſcape who is committed upon the Statute of Labourers. 14 *H.* 6. 8.

58. It lies againſt a Commiſſary, that returns a *Jure Patronatus* otherwiſe than it was found. 22 *H.* 6. 30.

59. For returning a Man ſummon'd that was not. 26 *Aſſiſe* 48. 1 *H.* 6. *pl.* 4. or where he was not ſummon'd in a reaſonable Time, for that is all one in the Eye of the Law, as tho' he had not been ſummon'd at all. 39 *E.* 3. 7.

60. Where the Action was held to lie for two Churchwardens againſt the Surrogate, for a falſe Return of a *Mandamus.* *Ward* and others againſt *Brampſton.* 3 *Lev.* 362.

61. Where an Action was held to lie againſt an Attorney, and two others, for appearing without a Warrant. 5 *Mod.* 205. *Stephens* v. *Squire.*

2 *Cro.* 360. *Barrett* v. *Winchcombe.* Where it hath been held to lie for an Eſcape upon an *Outlawry.*

2 *Cro.* 380. *King* v. *Andrews.* For an Eſcape on *Meſne Proceſs.*

1 *Cro.* 175. *Marſh* v. *Aſtry.* Where the Action hath been held to lie againſt the Under-Sheriff, for not returning a Writ of Summons in a Writ of Entry. 1 *Cro.* 175.

For Diſturbance of Officers in the due Execution of their Offices, or for doing ſomewhat, whereby they are prevented from the due Execution of the Laws.

Where the Action will lie, and againſt whom.

1. An Action upon the Caſe was brought againſt the Defendant, for that he had taken away his Goods, and had hidden them in ſuch ſecret Places, that the Plaintiff could not come at them to take them in Execution; but it was adjudged that the Action would not lie. 1 *Mod.* 286.

2. Where it was held not to lie for ſhutting the Door againſt the Sheriff, who came to take Goods in Execution. *Moor* 668. *Semayne* v. *Greſham.*

3. An Action upon the Caſe lies for the Keeper of a Foreſt, againſt him who diſturbs the Keeper in taking the Profits due by Preſcription to his Office; but he ought to declare upon the Certainty of the Profits which happen'd, that he might have adequate Damages. *Moor*, *Berkley* v. the Counteſs of *Pembroke.*

4. It lies for the Plaintiff in the Action againſt a Perſon that reſcues another on *Meſne Proceſs*, whereby the Plaintiff loſt the Benefit of his Action. 2 *Cro.* 485. *Hodges* v. *Marks* & *al'*.

5. So where it was held to lie for the Plaintiff againſt the Reſcuers of a Perſon taken in Execution, upon this Reaſon that he is the Party who hath the Loſs, and to whom the Injury was done; wherefore in Reaſon he ought to have the Action, and not be inforced to ſue the Sheriff; for perhaps the Sheriff is dead, and then no Action lies againſt his Executors; wherefore it is juſt that the Plaintiff ſhould take his Election; and if he recover, the Parties may plead it if they be ſued by the Sheriff, ſo as there is not any Danger of being double charged; wherefore it was adjudged for the Plaintiff. 3 *Cro.* 109. *Mynn* v. *Coughton* and his Wife.

6. Where it was held to lie for diſturbing the Under-Steward of a Manor. *Cook* v. *Younger*, 3 *Cro.* 16.

7. Where it was held to lie for Diſturbance of the Plaintiff, as Official to the Archdeacon of the Spiritualties. 3 *Cro.* 258. *Walker* v. Sir *John Lamb.*

8. Where it was held to lie for diſturbing the Plaintiff in his Office of Regiſter in *Rocheſter*. 3 *Cro.* 279. *Young* v. *Stoel*, *March* 38.

9. Whether the Action will lie for diſturbing the Plaintiff in exerciſing the Office of the Regiſterſhip of Policies of Inſurance in *London*, and taking the Profits thereof. *Hard.* 351. *Veale* v. *Priour*.

10. Where it was held not to lie for a Diſturbance of the Plaintiff in making Bills, and Bonds, which the Plaintiff claim'd by a Grant. *W. Jones* 233. *Fawlkner* v. *Bellingham*.

11. Where it was held not to lie for diſturbing the Plaintiff in his Office of Marſhal of the King's Bench, for that a Grant to him for Years was void. *Meade* v. *Lenthal*, *W. Jones* 463.

12. Whether it lies for a Water-bailiff diſturbed in his Office. 1 *Keb.* 323. *Thorp* v. *Bayly*.

13. That it lies for the Clerk to the Conſtable of *Windſor*, for a Diſturbance in his Office. 2 *Keb.* 264. *Taylor* v. *Staples*.

14 That it lies for the Steward of the Biſhop's Courts. 1 *Cro.* 636. *Scambler* v. *Waters*.

15. Where this Action hath been held to lie againſt the Defendant for an Eſcape from an Execution. 1 *Cro.* 237. *Salteſton* v. *Payne*.

For other Caſes wherein this Action hath been held to lie againſt Sheriffs, and other Officers, and where not, *vide*

1 *Roll's Abr.* 93. Letter *Q*.
Danver's Abr. fol. 183. Letter *Q*. R.
1 *Roll's Abr fol.* 98. Letter *B. C. E. F.*

Of Actions againſt Perſons of any Profeſſion or Trade, for the undue Exerciſe of ſuch Profeſſion or Trade.

Where this Action hath been held to lie, and by and againſt whom.

Againſt an INNKEEPER.

1. It lies againſt a Hoſt who refuſes his Gueſt, under Pretence that his Houſe is full of Gueſts. 1 *Roll's Abr. fol.* 3. Letter *F. pl.* 1.

2. But it is a good Plea in Bar that his Houſe is full, and he had no Room, for he is not bound to provide Lodgings out of his Houſe. *Dyer* 158. *pl.* 32.

3. If a Traveller comes to an Inn to Lodge, and the Innkeeper appoints him a Chamber for his Goods to be put *in*, and after the Gueſt is robbed, he ſhall have this Action. 1 *Roll's Abr. f.* 3. Letter *F. pl.* 2. 8 *Co.* 32. 4 *Leon.* 96.

4. If the Innkeeper is not at Home, or goes Abroad while his Gueſt is in the Houſe, yet he muſt anſwer for the Goods of his Gueſt, if they are ſtole. 1 *Roll's Abr. fol.* 4. Letter *G. Pl.* 3, 4.

5. But if he tells his Gueſt he is going Abroad, and therefore can't attend him, and the Gueſt takes up his Lodging there, if his Goods are ſtole the Innkeeper is not chargeable. *Ibm. pl.* 2.

6. If the Innkeeper refuſes his Gueſt becauſe his Houſe is full, and the Gueſt ſays he will ſhift among the reſt of his Gueſts, and he is robb'd, the Innkeeper is not chargeable. *Ibm. pl.* 1.

7. If the Innkeeper bids his Gueſt put his Goods into a particular Room, and that then he will warrant them ſafe, otherwiſe not, and the Gueſt permits them to lie elſewhere, the Innkeeper ſhall not be chargeable if the Goods are ſtolen. *Dyer* 266. *b. vide Moor* 78, 158. 8 *Co.* 33.

8. If the Innkeeper asks his Gueſt what Money or Goods he has, and the Gueſt tells him none, or leſs than he hath, and afterwards they are loſt, the Innkeeper is not chargeable. *Moor* 158. and 8 *Co.* 33.

9. If the Inkeeper delivers the Key of the Chamber to his Gueſt where the Goods are put, and the Gueſt leaves the Door open, and the Goods are ſtole, yet an Action lies againſt the Innkeeper. 8 *Co.* 33.

10. If the Gueſt is robbed by his Servant, or by any other Perſon which he brings with him, the Inkeeper is not chargeable. 8 *Co.* 33.

11. If a Man comes to an Inn, and deſires his Horſe to be put to Graſs, and the Horſe is ſtolen from the Field, the Innkeeper is not chargeable; but otherwiſe if the Innkeeper ſends him to Graſs of his own Head. 1 *Rolls's Abr. fol.* 4. Letter *F. pl.* 3, 4.

12. But if the Innkeeper, at the Requeſt of his Gueſt, puts his Horſe to Graſs, and he is ſtolen through wilful Negligence, the Innkeeper is anſwerable. *Ibm.* 5.

13. The Innkeeper is not bound to receive a Horſe of a Perſon who does not lodge at his Inn. 2 *Brownl.* 254. Nor is he bound to let the Gueſt, or his Horſe have Proviſion, unleſs he is paid for it before-hand; for the Innkeeper is not bound to truſt his Gueſt. *Bro. Action upon the Caſe*, 76. 9 *Co.* 87. *b.*

14. The Innkeeper is not anſwerable for the Perſon of the Gueſt, if he be beaten in the Inn. 8 *Co.* 32. *b.*

15. The Foundation of this Action is upon the Cuſtom of the Realm, for the Preſervation of the Goods of Travellers that come to an Inn to lodge, and therefore theſe four Things are to be obſerved. 1. That it muſt be a common Inn. 2. That the Party be a travelling Gueſt. 3. That he lodge at the Inn. 4. That the Goods of the Gueſt are in the Inn, as Goods of a Gueſt; for where-ever either of theſe fail, the Action will not lie.

To illuſtrate which, ſee the following Caſes.

16. If a Man takes down his Sign, he diſcharges himſelf from being reputed a common Innkeeper. 2 *Roll's Rep.* 345, 346. But if afterwards he makes it a common Practiſe to harbour People that are travelling, he ſhall be reputed a common Innkeeper. *Ibm.*

17. If one that is not a common Innkeeper be aſſign'd *per Hoſpitatorem Domini Regis*, to harbour a Perſon, he is not bound to take Charge of the Goods of the Gueſt. 1 *Roll's Abr. fol.* 2. Letter *D. pl.* 4. *New Dyer* 158. *in the Margin.*

18. If a Man comes to an Inn, and leaves Goods there, and goes away, and comes about two or three Days after, and in the mean Time the Goods are ſtolen, the Innkeeper is not chargeable, for the Party was not his Gueſt. 1 *Roll's Abr. fol.* 3. Letter *E. pl.* 2.

19. But otherwiſe if he comes again the ſame Night. *Moor* 877. *Pop.* 179. 2 *Brownl.* 255. *New Dyer* 158 *b. Cro. Jac.* 188. *Latch* 127.

20. And otherwiſe if the Innkeeper promiſes to keep them ſafe. *Cro. Jac.* 189. And 'tis ſaid in this Book, that the Action ought in this Caſe to be grounded upon the ſpecial Promiſe, and not upon the Cuſtom of the Realm.

21. If a Man leaves his Horſe at an Inn, and goes away two or three Days, tho' neither himſelf or Servants lodge there, he ſhall be reputed a Gueſt. 1 *Roll's Abr. fo.* 3. Letter *Q. pl.* 3. *Cro. Jac.* 189. *Moor* 877. *Noy* 126.

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17. If one that is not a common Innkeeper be aſſign'd *per Hoſpitatorem Domini Regis*, to harbour a Perſon, he is not bound to take Charge of the Goods of the Gueſt. 1 *Roll's Abr. fol.* 2. Letter *D. pl.* 4. *New Dyer* 158. *in the Margin.*

18. If a Man comes to an Inn, and leaves Goods there, and goes away, and comes about two or three Days after, and in the mean Time the Goods are ſtolen, the Innkeeper is not chargeable, for the Party was not his Gueſt. 1 *Roll's Abr. fol.* 3. Letter *E. pl.* 2.

19. But otherwiſe if he comes again the ſame Night. *Moor* 877. *Pop.* 179. 2 *Brownl.* 255. *New Dyer* 158 *b. Cro. Jac.* 188. *Latch* 127.

20. And otherwiſe if the Innkeeper promiſes to keep them ſafe. *Cro. Jac.* 189. And 'tis ſaid in this Book, that the Action ought in this Caſe to be grounded upon the ſpecial Promiſe, and not upon the Cuſtom of the Realm.

21. If a Man leaves his Horſe at an Inn, and goes away two or three Days, tho' neither himſelf or Servants lodge there, he ſhall be reputed a Gueſt. 1 *Roll's Abr. fo.* 3. Letter *Q. pl.* 3. *Cro. Jac.* 189. *Moor* 877. *Noy* 126.

22. If an Innkeeper invites a Man to Supper, and he ſtays there all Night, if he is robbed the Innkeeper is not chargeable, becauſe the Party was no travelling Gueſt. *Ibm. pl.* 4. 2 *Brownl.* 214. 8 *Co.* 32.

23. If a Man takes my Horſe and rides him into an Inn, and he is there ſtolen, I cannot have an Action, becauſe I am not a Gueſt. *Ibm. pl.* 6.

24. Otherwiſe if my Servant comes to an Inn upon my Horſe about my Buſineſs. *Ibm. pl.* 7.

25. If *A.* comes to an Inn, and ſtays there a Week, or longer, he ſhall be reputed a travelling Gueſt. *Latch* 127.

26. But if an Attorney comes to an Inn, and hires a Chamber there for the Term, and is robbed, the Hoſt is not chargeable. *Moor* 877.

27. If Goods are deliver'd to an Hoſt upon another Account, than meerly as the Goods of his travelling Gueſt, he is not anſwerable. 1 *Roll's Abr. fo.* 3. Letter *E. pl.* 1.

Againſt a CARRIER.

28. If a Man delivers Goods to a common Carrier, to carry them to a certain Place, and he loſes them, or is robbed of them, an Action upon the Caſe will lie againſt him, upon the common Cuſtom of the Realm; for the Law implies his Undertaking to carry and deliver them ſafe. 1 *Roll's Abr. fo.* 2. Letter *C. pl.* 1, 4.

29. And tho' he be no common Carrier, yet if he takes Hire, he is to be charged upon a Special *Aſſumpſit*. *Cro. Jac.* 262. *Rogers* v. *Head.*

30. A common Hoyman is reputed a common Carrier; and if a Man delivers goods at *York* to *B.* who is a Water-Carrier between *Hull* and *London*, to carry thoſe Goods from *Hull* to *London*; tho' no Mention is made of the Carriage to *Hull*, yet if the Goods be loſt he ſhall anſwer for them; for upon his general Receipt of them at *York*, he became liable. 1 *Syd.* 36. *Nichol* v. *Moore.*

31. A Bargeman, and Lighterman, are reputed common Carriers, for this Purpoſe. *Palmer* 528. 2 *Cro.* 330.

32. If a Man delivers Goods to a common Hoyman to carry, and he fearing to carry them, delivers them to *J. D.* to carry, and gives Notice to the Party, if he barely aſſents thereto, that will not diſcharge the Hoyman, unleſs the Party actually diſcharges him of the Carriage, and the Diſcharge only is traverſable. 2 *Cro.* 330. *Hob.* 17. 1 *Roll's Abr. fo.* 2. Letter *C. pl.* 4.

33. If *A.* delivers a Box to carry, and the Carrier asks what is in it, and *A.* tells him a *Book* and *Tobacco*, and in Truth there is 100 *l.* yet if the Carrier is robbed, he ſhall be anſwerable for the Money; for *A.* was not bound to tell him of all the Particulars that were in the Box, but the Carrier might have qualified this general Acceptance, as if the Carrier had told the Owner that it was a dangerous Time, and if there were Money in it he durſt not take Charge of it, that would have excuſed the Carrier. *Allen* 93. *Henrig* v. *Eccleſton*, 1 *Ven.* 238. *Morſe* v. *Slue.*

34. And it is very Neceſſary to underſtand the Nature of this qualify'd Acceptance; for if Goods be delivered to a Man to be ſafely kept, and after thoſe Goods are ſtolen from him, this ſhall not excuſe him, becauſe by the Acceptance he undertook to keep them ſafely, and therefore he muſt keep them at his Peril.

35. So it is, if Goods be deliver'd to one to be kept; for to be kept, and to be ſafely kept, is all one in Law; but if the Goods be deliver'd to him to be kept, as he would keep his own, there, if they be ſtolen from him without his Default or Negligence he ſhall be diſcharged; ſo if Goods be deliver'd to one as a Gage or Pledge, and they be ſtolen, he ſhall be diſcharged, becauſe he hath a Property in them, and therefore he ought to keep them no otherwiſe than he would his own; but if he that gaged

them, tender'd the Money before the Stealing, and the other refuſed to deliver them, then for this Default in him he ſhall be charged.

35. If *A.* leaves a Cheſt locked with *B.* to be kept, and taketh away the Key with him, and acquainteth not *B.* what is in the Cheſt, and the Cheſt, together with the Goods of *B.* are ſtolen away, *B.* ſhall not be charged therewith, becauſe *A.* did not truſt *B.* with them, as the Caſe is. And that which hath been ſaid before of ſtealing, is to be underſtood alſo of other like Accidents; as Shipwracks by Sea, Fire by Lightning, and other like inevitable Accidents. *Co. Lit.* 89. *a. b.*

36. If a Smith pricks a Man's Horſe, an Action lies againſt him. 1 *Roll's Abr. ſo.* 91. *pl.* 15.

37. If a common Farrier kills my Horſe with bad Medicines, an Action lies againſt him without an Expreſs *Aſſumpſit* to cure him. *Ibm. pl.* 13.

38. And if a Perſon, tho' he be not a common Farrier, Promiſes to cure my Horſe of a Diſtemper, if he kills my Horſe through an ill Adminiſtration of his Medicines, an Action lies againſt him. 1 *Roll's Abr. fol.* 96. Letter *Z. pl.* 6.

39. If a Servant which is my Agent, ſells an unſound Horſe, or other Merchandize in a Fair to a Man, no Action lies againſt the Maſter, for he did not command his Servant to ſell it to any particular Perſon; but otherwiſe it is, where he was directed to ſell it to a particular Perſon. 1 *Roll's Abr. fo.* 95. Letter *S. pl.* 1, 2.

40. If a Goldſmith makes Plate, wherein he mingles Droſs, ſo that it is not according to the Standard, and ſends it by the Servant, an Action lieth againſt the Maſter. *Cro. Jac.* 471.

41. If *A.* ſells a Horſe to B. and warrants him to be *Sound* of Wind and Limb, and his Legs clear, whereas he well knows that he is *Shoulder-pitch'd, and to have Splints on his Legs*, an Action lies againſt him on his Warranty. But if *A.* buys a Horſe of *B.* who warrants the Horſe to have both his Eyes, and the Horſe hath but one Eye, *A.* can have no Action; becauſe the Matter is not Secret, but lies in the Knowledge of the Party, and it was his own Neligence that he would not look thereto. 1 *Roll's Abr. fo.* 97. *pl.* 14. *Cro. Jac.* 386. *Baily* v *Merrel.*

42. An Action will lie againſt a Porter, Carrier or Bargeman, whether there be a Special Promiſe or no, upon his bare Receipt of the Goods, if the Goods are loſt by his Negligence, as well as againſt a Land-Carrier. 1 *Syd.* 36.

43. An Action upon the Caſe will lie againſt the Servant by the Maſter for bringing Goods from *India*, by which the Maſter broke his Covenant, if it were done fraudulently, knowing of this Covenant. 1 *Syd.* 298.

44. If one promiſes to take up Goods, and carry them to another Place, and does it ſo negligently, that the Goods are ſpoiled, an Action lies. *Salk.* 26.

45. The Maſter of a Stage-Coach is not liable for Goods loſt by the Driver, unleſs he takes a certain Price for the Goods. *Salk.* 282.

46. Whether a Maſter of a Ship ſhall be liable for Goods that are ſtolen away from the Ship, whilſt the Ship lay in the River, or not. *Vide* 1 *Mod.* 85. *Morſe* v. *Sluce.*

47. It lies not againſt the Maſter of a Barge, for Goods thrown Overboard for the Safety of the Lives of the Paſſengers. 1 *Roll's Rep.* 79. The Caſe of the *Graveſend* Barge.

48. It lies for a Maſter againſt a Surgeon, who undertook to cure his Servant of a broken Leg, and the Surgeon miſbehaved himſelf in his Profeſſion. 1 *Roll's Rep.* 124. *Everard* v. *Hopkins.*

49. It lies againſt a Man for ſelling corrupt Wines, tho' he does not warrant them to be good. 2 *Roll's Rep.* 5. *Southern* v. *Howe.*

50. It lies againſt a Man for ſelling Goods that are not his own. *Ib.*

51. It lies for not ſuffering the Leſſor to ſee whether Waſte be committed, or no. 2 *Roll's Rep.* 21. *Hunt* v. *Dadvers.*

52. Where it hath been held to lie for ſelling a Counterfeit Jewel. *Southerne* v. *Howe*, 2 *Roll's Rep.* 26.

53. There is a Difference taken, where a Thing is ſold, which of Right belongs to the Vendor, and where to a Stranger; for if the Property belongs to a Stranger an Action will lie againſt the Vendor, without any Words of Warranty. 2 *Roll's Rep.* 27.

54. It lies againſt a Tradeſman for putting another's Mark to his own Commodities. 2 *Roll's Rep.* 28.

55. Where it lies againſt the Maſter of a Ship for Goods loſt out of the Ship. 1 *Ven.* 190, 191. *Morſe* v. *Sluce.*

56. Where an Action was held to lie againſt an Attorney, for cauſing a *Fieri facias* to be executed againſt his Client, in an Action wherein the Defendant was Attorney for the Plaintiff. *Stile* 426. *Lawrence* v. *Harriſon.*

57. It lies againſt an Attorney that is retained, and makes Default. *Lib. Intr.* 2 *A. Sect.* 1. *Reg. Orig.* 113. *A.* If his Client be prejudiced by it.

58. It lies againſt the *Clerk of Aſſiſe* that takes a Fee, and enters not the Jury. 34 *H.* 6. 4. for thereby the Cauſe is delayed.

59. My Lord Chief Juſtice *Holt* was of Opinion, againſt three other Judges, that an Action upon the Caſe would lie againſt the Poſtmaſter General, for *Exchequer-Bills* loſt out of a Letter deliver'd at the Office at *London*, and he went upon this Reaſon.

That he conſider'd this as a Letter loſt in the Office, and not upon the Road; and held, the Poſtmaſter General was liable, becauſe the Care of the whole is committed to him, and the reſt are but his Deputies; for the Law makes the Officer, whoſoever he be, reſponſible of Conſequence, both for himſelf and his Deputy; as the Marſhal or Warden for a Priſoner, or the Sheriff for Goods taken in Execution, for which he is liable upon an *Extendi Facias* on the Statute, as well as a *Levari facias*, which is at Common Law, or for a Priſoner in Execution in Debt, which is by the Statute of 25 *E.* 3. *cap.* 17. as well as in Treſpaſs *Vi & Armis*, which is an Execution at Common Law; and this ſhews, that the Officer is in Conſequence liable, whether he become intruſted by Common Law, or by Statute; and there is no need of a Contract, for the Law makes him anſwerable. 2*dly*, He has a Reward which is the Reaſon in the Caſe of Innkeepers, Hoymen, &c. who are bound to keep ſafely, and anſwer all Neglects of thoſe that Act under them, and ſo they would be, tho' they ſhould expreſly caution againſt it; and this Caſe is within the ſame Reaſon with thoſe Caſes that make Men reſponſible for negligent keeping, *viz.* That if they could not be charged without aſſigning a particular Neglect, they might cheat any Man living, and it would not be in his Power to prove it; it is a hard Thing to charge a Carrier; but if he ſhould not be charged, he might keep a Correſpondence with Thieves, and cheat the Owner of his Goods, and he ſhould never be able to prove it; it would be hard in this Caſe, to put the Plaintiff to prove a particular Neglect among ſuch a Multitude of Under Officers; *ergo* the Poſtmaſter is to be charged with it.

2*dly*, *Exchequer-Bills* are proper to be ſent this Way; for the Words are general, any Packets whatſoever, and theſe being new Things is no Argument againſt it; for new Things may be govern'd by old Laws, when they fall within the Reaſon of thoſe Things, which were the ſubject Matter of thoſe Laws at firſt: Alſo when a Man takes upon himſelf a publick Employment, he is bound to ſerve the Publick as far as his Employment goes, or an Action lies againſt him for refuſing. Thus if a Farrier refuſes to ſhoe a Horſe, an Innkeeper to receive a Gueſt, a Carrier to carry, when they may do it, an Action lies; their Underſtanding is in Proportion to their Power and Convenience. *Dyer* 158.

3*dly*, If without this Act, or before it, any Perſon had voluntarily ſet up ſuch a Poſt-Office, that Perſon had been liable to an Action, and conſequently ſo is the Poſtmaſter; for all other people are excluded; the Nature of the Office is the ſame, and he is on the ſame Terms.

4*thly*, Tho' the Maſter be liable, yet *Breoze*, into whoſe Hands the Packet was deliver'd is chargeable alſo, but he is not chargeable as an Officer, but as Wrong-doer. It is upon this Reaſon that an Action lies againſt the Gaoler, as well as againſt the Sheriff for a voluntary Eſcape, for it is in the Nature of a Reſcue; but for a negligent Eſcape the Action lies only againſt the Sheriff. 1 *Leon.* 146. 3 *Cro.* 175, 743. 1 *Roll's Rep.* 78. is ill reported. *Noy* 90.

5*thly*, What is done by the Deputy, is done by the Principal; and it is the Act of the Principal who may diſplace him at Pleaſure, even tho' he were conſtituted for Life. *Hob.* 13. *Moor* 856. and the Act of the Deputy may Forfeit the Office of his Principal. 39 *H.* 6. 34.

6*thly*, The King's Diſcharge may be good againſt the King, as to his Revenues, but not as to the Subject, for it cannot hinder him of a Remedy the Law gives him. *Lane* v. *Cotton* & *al'.* 1 *Salk.* 17.

60. It lies againſt a Servant that will not do his Service, for the Maſter is thereby damnified. 2 *H.* 7. 11. *b*.

Secondly, Of the Declaration.

In Actions for Nuſances, Annoyances *and* Diſturbances, *and for other* Wrongs.

1. It lies againſt a Wrong-doer upon the bare Poſſeſſion only, and the Plaintiff need not ſet forth whether he hath a Title by Grant or Preſcription, for that goes to the Right. But if the Declaration be for diverting of Water *ab antiquo & ſolito curſu*, this amounts to a Preſcription, which muſt be proved at the Trial, or the Plaintiff will be Nonſuited. 3 *Mod.* 52. *Hebblethwaite* v. *Palmes*, *Skinner* 175. 2 *Show.* 243. The ſame Caſe is reported in 1 *Show.* 64.

2. Yet in the Caſe of *Palmes* v. *Keblethwayt*, 1 *Show.* 64. the Plaintiff brought an Action upon the Caſe for diverting a Water-courſe from the Plaintiff's Mill, and declares only that the Water *debet & ſolet currere*, and does not ſay that it was an *ancient Mill*; it was anſwered, that this was only a poſſeſſory Action, and that the Plaintiff need not ſay any more. I don't find any Judgment was given.

3. But in *Palmer* 290. in the Caſe of the Counteſs of *Rutland* v. *Bowler*, there is the ſame Point ſettled; and it was ſaid by Juſtice *Dodderidge*, That if a Man erects a new Mill upon his Freehold, and another diverts the Courſe of the Water from that Mill, altho' it paſſes through a Man's own Land, yet if the Water uſed to take that Courſe, an Action upon the Caſe will lie.

4. Agreeable to which is the Caſe of *Sands* and *Treſuſis*, in 3 *Cro.* 575. Where an Action upon the Caſe was brought for ſtopping up a Water-courſe, running in the Defendant's Land to another antient Water-courſe there running from his Mill to the Defendant's Mill. In that Caſe it was adjudged that the Action well lies, tho' the Plaintiff does not ſay that his Mill was an *ancient Mill*; and altho' he does not ſhew what Eſtate he had, likewiſe in *Paſ.* 4 *W.* & *M.* it was held, that to alledge, that Water *currere debuit & debet*, is ſufficient in an Action for ſtopping a Water-courſe, without ſaying that it ever ran there, becauſe it is a poſſeſſory Action. *Jackſon* v. *Savage*, *Paſ.* 4 *W.* & *M.* *Carthew* 316. The ſame Point adjudged in ——— and *Trip.*

5. And in the Caſe of *Tennant* and *Gouldin*, in 6 *Mod.* 313. The Lord Chief Juſtice was of Opinion, that *ſolebat currere*, when it relates to Water is ſufficient, but to make Uſe of that Expreſſion, in an Action for not repairing

ing a Wall, which was wont to be repaired, that Word *ſolebat* is improper and inſufficient; but in this Caſe the Plaintiff had Judgment upon another Matter, *viz.* becauſe it appear'd upon the Face of the whole Declaration that the Plaintiff was entitled to an Action. The Caſe was, the Plaintiff declared that he was poſſeſſed of a Meſſuage ſituate in ſuch a Place, for a certain Number of Years, and alſo of a Cellar, Part thereof contiguous to a Vault, Part of the Defendant's Meſſuage, which was wont to be ſeparated by a ſtrong thick Wall, Part of the Defendant's Meſſuage; that for want of repairing this Wall, the Filth and Soil of the ſaid Vault, flow'd into the ſaid Plaintiff's Cellar, &c. This Declaration was held good, and the Lord Chief Juſtice *Holt* ſaid, That there always had been, and then was a Difference, between charging a Wrong-doer, and the Tenant of the Land; for to charge a Tertenant, one muſt make a Title by Grant or Preſcription, but none need be made againſt a Wrong-doer; and formerly it was thought Neceſſary to maintain an Action againſt a Tertenant for ſtopping up a Way, to ſhew a Title, but the contrary has been held ſince. *Brit* v. *Stroud*, 4 *Mod.* 418. 6. *Mod.* 19. and that as well on a Demurrer as after a Verdict; but ſays he, I know no Caſe where one puts a Charge upon any one, except it be of common Right, but he ought to ſhew a Title, as in the Caſe of repairing one's Houſe. But if I have an Houſe-of-office in my Ground walled, and no cellar contiguous to it, and another digs a Cellar cloſe to my Wall, which ſtands well, till you have dug your Cellar, it ſeems hard to bring a greater Charge upon me, by his digging his Cellar contiguous to my Wall, whereby my Wall is in its Nature become Weaker. Suppoſe one Man has a Houſe and Cellar contiguous to it, and one Wall ſerves for both, and he ſells the Cellar, who ſhall repair the Wall; or ſuppoſe this Cellar was made after the Vault, and the Wall thereof; for the one Party's making a Wall, ſhall not take away the Owner of the Contiguous Soil's Liberty of digging a Cellar, but ſuch digging ought not to bring a greater Charge upon the other.

And at another Day the Court held the Declaration good, for there is a ſufficient Cauſe appearing in it, but not upon the Word *ſolebat*; but if the Defendant has a Houſe-of-office incloſed with a Wall, which is his, he is of common Right bound to repair it, and he is to uſe it ſo as not to annoy another; and there is a great Diverſity between a Preſcription to put a Charge upon a Man to repair his Fence, and to excuſe one from a Treſpaſs, for ſuch Charge muſt be by Preſcription. But the Reaſon here is, that one muſt uſe his own ſo, as thereby not to hurt another; and as of common Right one is bound to keep his Cattle from treſpaſſing on his Neighbour, ſo is he bound to uſe any thing that is his, ſo as not to hurt another by ſuch Uſage. If a Man has two Houſes, one which has a Houſe-of-office that is kept in by the Wall of the ſame Houſe, from a Cellar in another, and he ſells the Houſe to which the Houſe-of-office does belong, the Buyer is to keep it in good Repair, ſo as not to prejudice the Vendor's Houſe, for he is not to uſe it ſo as to hurt another.

Suppoſe one ſells a Piece of Paſture, lying open to another Piece of Paſture, which the Vendor has, the Vendee is bound to keep his Cattle from running into the Vendor's Piece of Ground; ſo of Dung, or any thing elſe.

If a Man erects a Houſe-of-office, to which there is contiguous a vacant Piece of Ground which is his, by which the Houſe-of-office is kept in, there, if he ſells the vacant Ground, and the Vendee digs a Cellar in it, as he may do, there he muſt Defend his Cellar againſt the Houſe-of-office.

If a Man builds next to a Vacant Piece of Ground of his own, and then ſells the new Houſe, keeping the Ground in his own Hands, he can't build upon the Waſte Ground ſo as to ſtop the Lights of the Houſe; for by Sale of the Houſe, all the Lights, and all Neceſſaries to make them uſeful paſs; for by Sale of the Houſe, all the Convenience it has will paſs; and as he himſelf can't build to the Prejudice of the Houſe ſo ſold, ſo cannot the Vendee of the vacant Ground do it; but if in that Caſe he had ſold the vacant Ground, without reſerving the Benefit of the Lights; the Court doubted in that Caſe, whether the Vendee might build ſo as to ſtop the Lights of the Vendor, becauſe he parted with the Ground without reſerving the Benefit of the Lights; for that Caſe differs from that of *Palmer* and *Fletcher*; and they ſaid, they doubted of the Caſe in *Keilw.* 98. where it is held, that the Owner of the lower Rooms in a Houſe is bound to repair the Foundation; there is indeed a Writ in *Nat. Brevium* 127. to a Mayor, to command him that has the lower Rooms, to repair the Foundation; and him that has the Garret to repair the Roof; but that is grounded upon a Cuſtom, and the Declaration would be better to ſay only, that the Wall, and the Houſe-of-office are the Defendant's, and that through the Default of him the Filth ran into your Cellar. *Tenant* v. *Golding*, 6 *Mod.* 313.

6. In an Action upon the Caſe, the Plaintiff declared that he is ſeiſed in Fee of a Meſſuage, and that he and all thoſe whoſe Eſtate he hath, have had a Seat in the Church; this was held good, tho' he does not preſcribe Time out of Mind to the Seat, and eſpecially the Action being brought againſt a Wrong-doer. 2 *Lev.* 193. *Merchant* v. *Whitepane*.

7. So where one declares upon a Poſſeſſion, it was held well enough againſt one that diſturb'd the Plaintiff of his Right of burying in the Iſle of a Church. 3 *Lev.* 73. *Aſhly* v. *Freckleton*.

8. In an Action upon the Caſe for diſturbing the Plaintiff of his Common; there was Judgment by Default, and a Writ of *Error* brought, and the *Error* aſſigned was, for that the Plaintiff had not laid any Title, either by Grant or Preſcription. It was ruled, That in an Action upon the Caſe, the Plaintiff need not ſhew a Title. *Skinner* 214. *Mich.* 36 *Car.* 2. *Bold* and *Broking*, *Jones Car.* 2. 148. 1 *Vent.* 165.

9. Where it was thought Neceſſary for the Plaintiff to ſhew how the particular Eſtate was created before he could well maintain his Action for Diſturbance of Common. *Cro. Eliz.* 154. *Honeywood* v. *Husbands*.

10. Where it was held a good Preſcription for the Plaintiff to preſcribe in the Tenant for Life, and him in Remainder, inaſmuch as they make but one Eſtate. *Ibid.*

11. Where an Action was brought by a Copyholder againſt the Lord, for diſturbing him in his Common, and the Preſcription, was that Time out of Mind there was a Uſage within that Manor, that every Copyholder within the Manor ſhould have Common in ſuch a Waſte, and the Defendant being the Lord, dug Holes and Burrows for Conies, and ſo had diſturb'd him of his Common; this was held a good Preſcription, and the Court took this Difference; where a Copyholder preſcribes againſt a Stranger, there he ought to alledge the Preſcription in the Lord for him, and his Tenants; but where he preſcribes againſt the Lord himſelf, there he ought to alledge it by way of Uſage. *Cro. Eliz.* 390. *Pearce* v. *Bacon*.

12. In an Action upon the Caſe for not grinding at the Plaintiff's Mill; and the Plaintiff alledges that he has, and ought to have Toll, and that the Inhabitants ought to grind at his Mill; that is good without making a Title to the Toll, or alledging a Preſcription or Cuſtom for the Inhabitants, 2 *Vent.* 292. or that he ought to repair the Mill, and find Grinders, or that he held the Mill. *Stile* 421.

13. In an Action upon the Caſe for ſtopping up Lights, to ſay that the Plaintiff was poſſeſs'd for divers Years, without ſaying how many, was held good. *Ventr.* 248.

14. Where it was held ſufficient to ſay, that the *Tenants* and *Occupiers* of ſuch Lands have Time out of Mind uſed to repair ſuch a Fence, without ſhewing what Eſtate they had. 1 *Ven.* 264. *Anonymus.*

15. Where it was ſufficient to declare upon the Poſſeſſion only. 3 *Keb.* 820. *Saunders* v. *Williams*, 1 *Ven.* 319.

16. In an Action upon the Caſe for ſtopping of a Way, the Plaintiff declared that he was poſſeſſed, as an Inhabitant, of and in a certain antient Meſſuage, on the 29th of *September*, in the firſt Year of the now King and Queen, and ſo continued to the firſt Day of *January* then next following, and for all that Time had a Foot-way over the Defendant's Ground, *tanquam ad Meſſuag' præd' ſpectan' & pertinen' & de jure habere debet*, and that the Defendant ſtopped it up, *ad damnum, &c.*

The Defendant pleaded a frivolous Plea; to which there was a *Demurrer*; it was objected on the Defendant's Part, that the Declaration was inſufficient, becauſe the Plaintiff did not preſcribe for the Way, nor otherwiſe intitle himſelf to it than by a Poſſeſſion of the Meſſuage, and that he had, and ought to have a Way to the ſaid Meſſuage belonging, *&c.* and a Difference was taken between this and *Dent* and *Oliver*'s Caſe, 2 *Cro.* 43. where one alledged himſelf to be ſeiſed in Fee of a Manor, and had a Fair there, and that the Defendant diſturbed him taking Toll. And in 2 *Cro. Stackman* and *Weſt*, there is a Preſcription laid in the Dean and Chapter, who has the Fee for the Way; but it was objected, that a Corporation could not preſcribe in a *que Eſtate*; but it was held well, being but Inducement to the Action.

And the Court here held the Declaration ſufficient, it being but a poſſeſſory Action; but a Caſe was ſaid to be ſo adjudged in this Court between the ſame Parties, *Anno primo Jacobi Secundi. Vide* the Caſe of *St. John* and *Moody*, upon the like Point. 2 *Vent.* 186, 187.

17. The Plaintiff declared, that he was poſſeſſed of a Tenement, and a Piece of Land, to which he ought to have *Common* for Beaſts *Levant* and *Couchant* upon his Tenement in, *&c.* and that the Defendant had entred and made Holes in ſeveral Acres, and ſtor'd them with Conies, ſo that the Plaintiff could not enjoy his *Common*, *&c.* The Defendant *demurred* to the Declaration, and Judgment was given for the Plaintiff in the Common Pleas; and a Writ of Error was brought, and the Error aſſigned was, that the Plaintiff had not entitled himſelf to this *Common*, but only ſaid *poſſeſſionat' & habere debuit*; but the Action was adjudg'd to be well brought, it not appearing that the Defendant was in Poſſeſſion, but only a *Tort-Feazor*. *Skinner* 621. *Stroud* v. *Birt*.

18 An Action of the Caſe was brought for diverting a Water-courſe, in which the Plaintiff declared, that he was ſeiſed of a Water-Mill, to him and his Heirs, *ſecundum conſ. Decanatus de Wolverhampton*, and ſo preſcribed for a Water-courſe, *&c.* and that the Defendant intending to deprive him of the Profit of the ſaid Mill, did divert the Water *ab antiquo curſu ſuo, per quod* he could not grind ſo faſt; there was a Verdict for the Plaintiff.

It was moved in Arreſt of Judgment, for that a Copyholder cannot preſcribe in a *que Eſtate*, and the Court could not take any Notice of any other Eſtate the Plaintiff had by this Declaration, he ſhould have left out *ſecundum conſ. Decanatus*; for how can he be ſo ſeiſed, without ſhewing what that Cuſtom was.

He doth not ſay that he diverted the Water from the Mill, but from its antient Courſe, *per quod, &c.*

The Nature of his Damages is laid inſenſibly, for the *Giſt* of the Action is, That he had a Mill, out of which he had Profit by grinding. Now the Word *Molare* is inſenſible, and there is a proper Word for grinding.

The firſt Objection was over-ruled by the Court; for if the Plaintiff was ſeiſed of an Eſtate in *Burrough Engliſh*, that had been a cuſtomary Eſtate, becauſe he hath it by the Cuſtom of the Manor, and in ſuch Caſe he may preſcribe. 5 *Mod. Rep.* 206. *Richards* v. *Hill*.

This Action lies for making a Dam, ſo does it for abating a Dam which guides the Stream. 1 *Show.* 250.

If it be for diverting a Water-courſe, the Antiquity of the Mill muſt be ſet forth in the Declaration. 3 *Mod.* 49.

19. If a Man hath Common in a Waſte as appurtenant to his Meſſuage, and 100 Acres of Land for 100 Sheep, and *B.* hath other Common there appurtenant to his Meſſuage, and 100 Acres of Land for 100 other Sheep in Fee, and *A.* purchaſeth of *B.* &c. and afterwards *A.* is diſturb'd of both Commons, *A.* in that Caſe can't preſcribe to have both the Commons for the Meſſuages, and 200 Acres of Land, but he muſt make two Preſcriptions to the two ſeveral Meſſuages and Lands. *Bend.* 74.

20. The Plaintiff brought an Action upon the Caſe againſt the Defendant, ſetting forth, that he had a Right of Common in *A.* and that the Defendant put in his Cattle, &c. *Ita quod Communiam in tam amplo modo habere non potuit.*

The Defendant pleads a Licenſe from the Lord to put in *Averia ſua*, which was agreed to comprehend Hogs in the moſt general Senſe; upon a *Demurrer* the Court gave Judgment for the Plaintiff, becauſe the Defendant in his Plea had not alledg'd that there was ſufficient Common left for the Commoners; for the Lord can't let out a Paſture ſo as not to have ſufficient Common for the Commoners; and tho' it was objected that the Plaintiff might have reply'd ſpecially, and ſhewn there was not enough, yet it was agreed by the Court, That in this Caſe he need not; becauſe his Declaration to that Purpoſe was well enough, and that being the very *Giſt* of the Action, the Defendant ſhould have pleaded it.

It was held indeed, that in an Action upon the Caſe by the Commoner againſt the Lord, he muſt particularly ſhew the Surcharge; but if the Action be brought againſt a Stranger, this will be ſufficient. 2 *Mod.* 6. *Smith* v. *Ferwell.*

21. In an Action upon the Caſe where the Declaration was, that the Plaintiff *quamdiu & adhuc* was ſeiſed of a Meſſuage to which he had Common, and the Defendant made Coney-Burrows; but it don't appear that it was at the Time he was ſeiſed, and therefore naught. *Ben.* 137.

22. In an Action for ſtopping a Way to ſuch a Field, it is good without ſhewing what Intereſt he had in the Field; but for ſtopping a Way to a Cloſe it is otherwiſe. *Lat.* 160.

23. In an Action of Treſpaſs upon the Caſe for ſtopping a Way upon a Preſcription in *A.* for his Tenants and Occupiers, and the Plaintiff does not ſay he is an Occupier, it is not good. *Stile* 302.

24. How a *Preſcription* may be made for a Way, ſee *Stile Rep.* 300, 301, 371.

25. If I have, and Time out of Mind had a private Way to my Houſe, Ground, Common, or other Place, by Cuſtom, Preſcription, Feoffment or otherwiſe, and another Man ſtop's or hinders it in all, or Part, I muſt have this Action.

26. Where a *Preſcription* to do that which is in its Nature a *Nuſance*, was held a bad *Preſcription.* 2 *Cro.* 446. *Fowler* v. *Sanders.*

27. An Action was brought by *A. B.* againſt *C. D.* ſetting forth, that the ſaid *C.* was ſeiſed in Fee of the Land over which there was a Way, and likewiſe of other Lands, and did by Indenture bargain and ſell to *J. S.* the Land in Fee, with a Way over his Land, and that *J. S.* let to the Plaintiff the Land for Years; the moſt material Objection taken to this Declaration was by *Yelverton*, that there is not any Grant of the Way in the Indenture, but only a Bargain and Sale of Land, and of a Way out of his other Land, which cannot be good for nothing but the Uſe paſſed by the Deed; and there cannot be a Uſe of a Thing which is not in *Eſſe*, as a Way, Common, &c. which are newly created, and until they be created

no Uſe can be raiſed by Bargain and Sale, and by Conſequence nothing paſſed by this Indenture; and of that Opinion was all the Court, that for this Cauſe the Plaintiff had not ſhewn any ſufficient Title.

But as to two more Objections taken; 1. That the Plaintiff does not ſhew the Deed of the Leaſe, and without a Deed the Way paſſeth not. And 2. That the Leaſe is pleaded of the Land, without any expreſs Mention of the Way; the Court held the Declaration good; for when Land is granted with a Way thereto, it is *quaſi* appendant unto it, and a Thing of Neceſſity; wherefore by the Leaſe of the Land, altho' the Way be not mentioned, it well paſſeth without its being expreſſed in the Deed; and therefore the Difference will be betwixt a Grant of Land with Common and Eſtovers to be burnt there, if he lets the Land, the Common and Eſtovers will not paſs without a Deed, and expreſs Words therein; becauſe they be Profits apprender in another's Soil, and are not of Neceſſity; but the Land cannot be uſed without a Way; wherefore it ſhall enſue it, and paſs of Neceſſity, and Unity of Poſſeſſion does not extinguiſh it. 2 *Cro.* 189, 190. *Beaudeley* v. *Brook.*

28. In an Action on the Caſe for a *Nuſance* in ſtopping of a Way; the Plaintiff by his Declaration entitled himſelf to the Way by a Cuſtom, whereas he ought to have claimed it by Preſcription; and for that Cauſe the Court held the Declaration to be naught. *W. Jones* 376. *Baker* v. *Bearman.*

29. In an Action on the Caſe for ſtopping a Way; 'twas mov'd in Arreſt of Judgment, that it did not appear in the Declaration to what Village the common Way led to; and *per Cur.* it is a good Exception; but if it had been unto a common Way there, or in ſuch a Village, it had been good. 1 *Brownl.* 6. *Allyns* v. *Sparks.*

30. The Plaintiff declared for a Way *in & trans peciam Paſturæ*; and after a Verdict Judgment was ſtaid, becauſe *pecia Paſturæ* is uncertain. *Lutw.* 124. *Jones* v. *Hamond.*

31. If it be laid to be *uſque ad Communiam*, 'tis good, becauſe it ſhall be intended a common Field; but if it is *uſque ad Clauſum* 'tis ill, unleſs the Plaintiff alſo ſhews in his Declaration what Intereſt he had in the Cloſe. *Latch* 169. *Parker* v. *Newſham*, ſee *Noy* 86.

32. An Action upon the Caſe was brought for laying in the Highway in *Coggeſhall*, leading from *Coggeſhall* to *Brayntee*, divers Loads of Logs, whereby the Defendant much ſtraitned the Highway, ſo as upon the Evening of ſuch a Day, riding on the ſaid Way, the Plaintiff's Horſe ſtumbled upon theſe Blocks and much hurt him, by which, *&c.* the Defendant confeſſes it to be an Highway; but he ſaith, That the Town of *Cogegſhall* is an antient Vill, wherein all the Inhabitants there having antient Houſes, uſed Time out of Mind to lay Logs in waſte Places of the ſaid Way before their Doors for their Fuel, leaving ſufficient Paſſage for Chariots, Horſemen and Footmen; and that he was ſeiſed in Fee of an antient Houſe, and laid Logs for his Fuel in Waſte Places of the Highway, leaving ſufficient for Paſſage of Chariots, Horſemen and Footmen, *&c.* And the Plaintiff riding by the Way *improvide*, turned his Horſe upon the Blocks, and fell, *&c.* Whereupon the Plaintiff *demurred*, and without much Argument it was adjudged, Firſt, That the Action will lie for the Plaintiff, becauſe of his having a ſpecial Damage, and Cauſe to bring that Action, although it be a publick *Nuſance.* 27 *H.* 8. 27. *Co.* 5. 73. *Williams*'s Caſe. Secondly, That the Preſcription to make a *Nuſance* is not good, for it is againſt the Law to preſcribe in ſuch Manner. Thirdly, This Preſcription for the Inhabitants is not good; wherefore it was adjudged for the Plaintiff. 2 *Cro.* 446. *Fowler* v. *Sanders*, 180. *Noy* 120. *Stone* v. *Wakeman.*

33. An Action upon the Caſe was brought ſuggeſting, that whereas there had been a Way within the City of *Canterbury*, leading from St. *Peter-ſtreet*, unto a Street called *Ruſhmarket*; and that the Inhabitants of the City had uſed Time whereof, *&c.* to paſs that Way, and that the Plaintiff was an Inhabitant there, that the Defendant had made a Ditch, and erected a Pale croſs that Way, whereby the Plaintiff had loſt his Paſſage, *&c.* The Defendant pleaded Not guilty, and by a *Viſne* awarded of *W.* in the County of *Kent*, by Aſſent of the Parties, in Regard the Cauſe concern'd all the Inhabitants of *Canterbury*, it was found for the Plaintiff; and it was moved in Arreſt of Judgment, that it was a Mis-trial; Firſt becauſe it ought not to have been by a *Viſne* of *Canterbury*. *Vide* 21 *Ed.* 4. 31. *Dyer* 299. But the Court held it to be well enough becauſe it was by Aſſent of the Parties, which is enter'd upon Record. *Et conſenſus tollit erorem*; *vide* 44 *Ed.* 3. 6. 44 *Aſſ.* 4. *Dyer* 397. And *Fenner* cited the Lord *Cromwell*'s Caſe to be adjudged, that an Iſſue tried by another Jury than it ought to be; yet it being by Aſſent was well enough. Secondly, It was moved by *Coke* Attorney General, that this Action lies not for a private Perſon, becauſe it is a common *Nuſance*, and is puniſhable in the Court-Leet only, unleſs he can ſhew ſome Prejudice; as 27 *H.* 8. 27. is, and ſo it was adjudged in this Court between Serjeant *Benlow* and *Kemp*, that he might maintain an Action upon ſome ſpecial Prejudice; and at St. *Alban*'s Term, between *Williams* and *Johns*, where a Chapel was within a Manor, and the Parſon of the adjoining Church uſed to read Divine Service every Sunday, for the Lord and his Tenants in the ſaid Chapel; and for that the Parſon had failed therein, the Lord brought an *Action upon the Caſe*; it was adjudged that it lay not; for ſo every one of the Tenants might bring the like Action, which would be inconvenient that he ſhould be liable to all their Actions, but he ought to be puniſhed by the Ordinary in this Caſe; but peradventure where there is not any other Remedy to be had than by Action, there every one may have his Action who is grieved. And therefore it was adjudged between *Weſtbury* and *Powell*, where the Inhabitants of *Southwark* had a common watering Place, and the Defendant had ſtopped it, 'twas adjudged that an *Action on the Caſe* lay, but it is here puniſhable in the Leet; wherefore, *&c.* and of that Opinion were *Popham*, *Gawdy* and *Fenner*; that without a ſpecial Greivance ſhewn by the Plaintiff, the Action lies not; but *Clinch econtra*; for the Stopping of itſelf is a ſpecial Prejudice to the Plaintiff, that he cannot go that Way; wherefore it is Reaſon he ſhould maintain the Action; but it was adjourned. *Co. Lit. fol.* 56. 1 *Cro.* 664. *Fineux* v. *Hovenden*.

34. In a Declaration for a *Nuſance* in ſtopping up a Way, tho' the Way be Appurtenant to a Houſe, the Plaintiff in his Declaration ſhall never alledge a Way to be appendant or Appurtenant to a Houſe, becauſe it is only an Eaſement, but no Intereſt; and ſo it was adjudged on a Special Verdict. *Yelv.* 159. *Godfrey* v. *Frith*.

35. In an Action upon the Caſe the Plaintiff declares, that whereas the Plaintiff being ſeiſed of an Houſe in *D.* in the County of *L.* and ſhews the Eſtate, *&c.* and preſcribes to have a Croſs-way, in, by and through a certain Way in *Sale*, in the County aforeſaid, into ſuch a Cloſe in *D.* in the ſaid County; and that the Defendant made a Hedge in the Cloſe of *D.* in the ſaid County, and ſtop'd up his Croſs-way, *per quod actio accrevit*; and upon Not guilty pleaded, it was found for the Plaintiff; and upon a Motion in Arreſt of Judgment theſe following Exceptions were taken.

Firſt, Becauſe to preſcribe to have a croſs Path in a certain Way, it ſhall be intended a common Croſs-way, and that being of common Right the Preſcription is gone; but the Court held the contrary. For tho' a Man cannot preſcribe in a common Croſs-way, yet to have a Way in, by and through that common Croſs-way it is otherwiſe, for that is acroſs, athwart, and through the Croſs-way; and then notwithſtanding that it is in the Highway, he may continue his Courſe without a Preſcription, it may be that the Croſs-way is incloſed and hedged on both ſides; and therefore to preſcribe to paſs croſs there, and repaſs through, is a good Preſcription.

Secondly, The Croſſing and going through the Croſs-way, is only ſhewing the Continuance of the Croſs-way unto ſuch a Cloſe, to which the Plaintiff claims a Way; therefore the Declaration is not good, becauſe the Village, nor County, where *B.* Acre lies, and to which the Way ſhould lead, is alledged; but the Court held on the contrary, becauſe the Village and the County is alledged where the *Nuſance* is done; for that only is the Cauſe of the Declaration, to which he hath pleaded Not guilty; and upon that the Iſſue is joined, and thence the *Viſne* ſhall come; but if the Iſſue had been joined upon the Preſcription of the Croſs-way, or the Right of that, the *Viſne* ſhall come from both Villages, *viz.* where the Houſe is, and out of the Village where the Croſs-way leads, and then the Plea had been ill; for the Incertainty of the Village or County where *B.* Acre lies. *Noy* 9. *Paul Banning*'s Caſe.

36. An Action upon the Caſe was brought, ſuppoſing that the Governour, and the Poor of the Hoſpital of the Holy *Trinity* in *Greenwich*, of the Foundation of *Henry* Earl of *Northumberland*, were ſeiſed of an Houſe in the Pariſh of St. *Martin in the Fields*; and that he, and all thoſe, whoſe Eſtate in the ſaid Houſe, *&c.* have had a Foot-way from the ſaid Houſe, unto the River of *Thames* in the ſame Pariſh, and let the ſaid Houſe to the Plaintiff for Years; that the Defendant erected a Gate croſs the ſaid Way in the ſaid Pariſh, *&c.* Upon Not guilty pleaded, and found for the Plaintiff, it was moved in Arreſt of Judgment, that the Declaration was not good, becauſe it is ſhewn, that the Corporation, and all thoſe whoſe Eſtate, *&c.* have had, *&c.* whereas a Corporation cannot preſcribe but in him and his Predeceſſors; alſo one cannot ſhew a *Que Eſtate*, without ſhewing how by Deed, for they cannot have it without Deed; and of that Opinion was *Doderidge* Chief Juſtice, but the other three Juſtices were againſt him, becauſe the Action is brought by the Leſſee for Years, who hath not the Deed, and it is but a Conveyance to the Action, which is grounded upon the Diſturbance done unto him as to his Poſſeſſion. But if he had claimed Rent, or Common in Groſs, which cannot paſs without a Deed, it had been otherwiſe; for there he could not ſhew a *Que Eſtate*, without ſhewing a Deed how he came by the Eſtate; wherefore it was adjudged for the Plaintiff. 2 *Cro.* 673. *Slackman* v. *Weſt*.

37. *Cantrel* brought an Action upon the Caſe againſt *Stephenſon*, for ſtopping his Way in a Meadow called *Madbrook*, in the Pariſh of *Rotherhithe* in *Kent*; upon Not guilty pleaded, and a Verdict found for the Plaintiff, it was moved in Arreſt of Judgment, that the Plaintiff, as Leſſee to the Haberdaſhers Company of *London*, claimed to have a Way for them; whereas they having let the Land cannot have the Way, but the Leſſee in Poſſeſſion. 2dly, The Preſcription is not rightly applied, for it ought to be for them to have a Way *pro tenentibus & Occupatoribus ſuis*, which is not ſo here. *Twiſden* anſwered, it ſhall be intended Tenants and Occupiers to the Haberdaſhers, tho' it be not ſaid *ſuis*. *Latch* ſaid, That a Preſcription *per que Eſtate*, is good in an Action upon the Caſe, becauſe no Land is claimed. And *Green* on the other Side ſaid, the Exception taken was helped by the Verdict. *Wild* on the other Side ſaid, That it doth not appear, that the Tenant who brings the Action, comes in by the Haberdaſhers who claim the Way, and ſo he cannot preſcribe to have it, and the Preſcription ought to be laid *pro tenentibus & Subtenentibus*;

which *Rolle* Chief Juſtice denied and ſaid, that it is ſaid, that the Haberdaſhers were ſeiſed in Fee, & *poſtea hucuſque*, and ſo they have the Fee at the Time, and may preſcribe; but it had been better for the Party to have ſhewed that he was their Tenant; but it being after a Verdict, the Queſtion is, whether it be not helped; upon reading the Record, *Rolle* Chief Juſtice obſerved, that it appeared not whoſe Occupier and Tenant the Plaintiff is, but only by way of Argument, but ſaid, the Queſtion is, whether the Verdict does help it, and he inclined it did not, becauſe the Action is brought by the Tenant, who hath not intitled himſelf to the Action; for he hath made only a Title to the Way in the Haberdaſhers, but hath derived no Eſtate from them to himſelf. At another Day, *Rolle* Chief Juſtice ſaid, We muſt not take Things by Intendment, and here is a Failure in the very *Giſt* of the Action, for he hath no Action, as for ought appears he hath no Intereſt; for it appears not how he is Occupier of the Land, for he doth not ſay he is *Occupator ſuus*; and as he hath laid the Declaration, the Company ought to have brought the Action. *Jermain* Juſtice ſaid to the ſame Purpoſe; and ſaid, that upon a *Demurrer* it had been clearly naught, and the Verdict here doth not help it; for no Title appears for the Plaintiff, for the Verdict cannot give what he had not before. *Nicholas* and *Ask* Juſtices ſaid to the ſame Effect. *Rolle*: If it had been *Occupator ſuus*, I doubt it would not make the Declaration good, becauſe it ſhews not by what Title; ſo the Rule was, *nil capiat per Billam niſi. Stile* 300. *Cantrell* v. *Stephens.*

38. An Action upon the Caſe was brought, ſuggeſting, That whereas the Plaintiff, upon the ninth Day of *October*, 5 *Car.* was poſſeſſed of an antient Houſe in *Worceſter*; and the Defendant the 9th of *October*, 5 *Car.* was, and is yet poſſeſſed of another Houſe, and a vacant Piece of Land adjoining to the North Part of the Plaintiff's Houſe, wherein were three Windows, Time whereof Memory, &c. by which Windows the Light came out of the ſaid vacant Piece of Land, into the Plaintiff's Houſe, Time whereof, &c. that the ſaid Defendant maliciouſly to deprive him of the Light coming to the ſaid Windows into his Houſe, on the ſaid 9th of *October*, 5 *Car.* erected a Building on Part of the ſaid vacant Piece of Ground, and thereby ſtopped the Light coming by the ſaid Windows into his Houſe; whereby his Houſe is totally darken'd, and he much prejudiced thereby. The Defendant pleaded Not-guilty, and it was found againſt him; and an Exception was taken in Arreſt of Judgment, that the Declaration is repugnant in itſelf, for to ſay *adhuc poſſeſſionatus* of the ſaid vacant Piece of Land, and to ſhew the Offence in erecting a Building upon it, ſhews that it is not now a vacant Piece of Land; and of this Opinion was *Berkley*; but *Richardſon*, *Jones* and *Crooke*, held, that this is good enough, and no Repugnancy in the *adhuc Poſſeſſionatus*; for it may be, that Part of the ſaid vacant Parcel of Land is built upon and darkens his Light, and Part remains ſtill vacant, and the Declaration as to that is but Surpluſage, and the one Part will ſtand with the other. Another Exception was taken, becauſe he alledgeth not any Perſon in whom the Preſcription may be fixed, and the Plaintiff is but Leſſee for Years, who cannot preſcribe; but the Exception was diſallowed; for it was anſwered thereto, that to ſay the Time whereof, &c. there need be not any Preſcription in any Perſon; wherefore it was adjudged for the Plaintiff. 3 *Cro.* 325. *Symonds* v. *Seabourne*, *S. C. W. Jones* 326.

39. In an Action upon the Caſe for ſtopping of Lights, the Plaintiff declares, that he was poſſeſſed for many Years, without ſaying how many, and that Time out of Mind the Light came in at the Windows, and it was ſaid to be a good Form of a Preſcription. 1 *Ven.* 248.

40. In an Action upon the Caſe for building a Houſe, by which the Plaintiff's Lights were ſtopped; where the Plaintiff ſays in his Declaration,

tion, that the Light *de jure debet & inferri conſuevit* into his Houſe; after a Verdict it was held ſufficient, for that it muſt ſo have appear'd upon the Trial, but that it would have been otherwiſe upon a Demurrer. *Carthew* 454. the Caſe of *Roſwell* and *Pryor*, *Trin.* 10 *W.* 3.

41. In an Action upon the Caſe for a *Nuſance* erected, it was reſolved *per totam Curiam*, where a *Nuſance* is made to the Land of two Tenants in Common, that they ſhall join in an Action, for it is perſonal, and concerns the Profits; and as they ſhall join in Treſpaſs, ſo they ſhall join in this Action, but in forging of a falſe Deed, they ſhall ſever; for that concerns the Inheritance of the Land. It was alſo held for a *Nuſance*, erected in the Name of a Deviſor, and continued afterwards, as this Caſe was, the Deviſee ſhall join in the Action, for the Continuance thereof is as the new Erecting of ſuch a *Nuſance*. 2 *Cro.* 231. *Some* v. *Barwick.*

42. Several Freeholders cannot join in a Preſcription to claim an intire Intereſt in another's Soil, nor can Freeholders and Copyholders join. 1 *Ven.* 390.

43. An Action was brought for keeping a mad Bull, but the Judgment was arreſted for not alledging in the Declaration, that the Plaintiff knew the Bull to be mad. 1 *Lut.* 90. *Bayntine* v. *Sharpe.*

44. An Action was brought, ſetting forth in the Delaration, that the Defendant kept a Dog accuſtomed to bite Sheep, and *ſcienter retinuit*, without *ſciens* that the Dog was accuſtom'd to bite Sheep, and held good. 2 *Syd.* 127.

45. An Action upon the Caſe was brought for negligently keeping his Fire, by Reaſon whereof the Plaintiff's Houſe was burned, *viz. In parietibus in partitionibus feneſtris in operibus ferrariis & Ornamentis ejuſdem Domus*; and upon Demurrer this Exception was taken to the Declaration; That it was too general and incertain, for Damages could not be taken for the Walls and Ornaments of the Houſe.

As where a Treſpaſs was brought for taking *diverſa genera apparatuum*, or Trover for Goods, *cum aliis Implementis & Neceſſariis*, not ſhewing what they are; this was held ill after a Verdict, for the Court cannot give Judgment for ſuch uncertain Parcels.

Econtra; It was argued for the Plaintiff, that the Action had been well brought without the *Videlicet*; for the Enumerating the Particulars was but Matter of Aggravation and Inference; and this being an Action wherein Damages are to be recover'd, they may be divided, and the Plaintiff ought to recover, for that which is well laid in the Declaration, and that is for negligently keeping his Fire, and the Plaintiff had his Judgment. 5 *Mod. Rep.* 181. *Littleton* v. *Cole.*

46. In an Action upon the Caſe, for diſturbing the Plaintiff in the Enjoyment of a Church Seat, which he preſcribes for himſelf and Family, without ſaying that he uſed, or ought to repair it, or ſome other Conſideration; after a Verdict for the Plaintiff, the Declaration was held good; for without Reparation he cannot preſcribe; therefore it ſhall be intended to be given in Evidence; but upon a Demurrer it would have been naught. *Ray.* 52. *Bateman* v. *Buxton*, 1 *Syd.* 203.

47. The Plaintiff declared for lending a Horſe to ride from ſuch a Place to ſuch a Place, and that the Defendant abuſed him *in itinere*, without alledging a Place for the *Venue*; Q. if good. *Ray.* 187.

48. In an Action upon the Caſe for not grinding at the Plaintiff's Mill; he ought to ſhew that his Mill is ſufficient to grind all the Corn, &c. cited in *Ray.* 327.

49. In a Declaration for Diſturbance of an Office, the Plaintiff ought to lay his Declaration, that the Defendant diſturbed him *Vi & Armis.* 9 *Co.* 50. *b.* But in a Declaration for Non-feazance, it ought not to be ſo laid, becauſe that is *oppoſitum in objecto.* 9 *Co.* 50. *b.*

50. Tho' a Declaration in an Action upon the Caſe begins, that the Plaintiff complains in an Action of Treſpaſs for that, &c. yet that may be a Declaration in Caſe, tho' the *Exordium* of the Declaration is in an Action of Treſpaſs. *Cro. Car.* 325.

51. In an Action upon the Caſe for falſly affirming the Goods to be his own, when they were the proper Goods of another, without ſaying *ſciens* that they were the Goods of another; was held to be well enough after a Verdict. *Carthew* 90. the Caſe of *Croſs* v. *Gardner*, 2 *Cro.* 196, 387, 469, 470. *Telv.* 20, 40. 2 *Cro.* 474. 1 *Roll's Abr.* 91. *Syd.* 146. 1 *Lev.* 102.

52. In an Action upon the Caſe for keeping the Paſſage ſtopt, ſo that the Plaintiff could not come to cleanſe his Gutter; it is Neceſſary to alledge a Requeſt to open his Paſſage, but after a Verdict, the not alledging it ſhall be ſupplied. *Mod. Rep.* 27.

53. An Action upon the Caſe was brought for refuſing to admit an Attorney into Court; that was held by Preſcription, and alledged he was elected by the Mayor, who had the Election for 200 Years and more; and the Declaration was held good. *Jones, Car.* 2. 145.

54. In an Action upon the Caſe againſt a Taylor for ſpoiling a Coat, without ſhewing what Materials were delivered to him, or how the Coat was ſpoil'd; and the Declaration was held naught for both Reaſons. *Vent.* 268.

55. An Action upon the Caſe was brought upon a Cuſtom for Liberty of Foldage for all Sheep feeding in common Fields; and alledged, that the Defendant *non faldavit ſicut debuit*, nor permitted the Defendant to have Foldage; after a Verdict the Declaration was held bad. 2 *Ven.* 138.

56. Where a Declaration in an Action for erecting a Nuſance, need not mention the Plaintiff's Houſe to be an Antient Houſe. 3 *Keb.* 133. *Cox* v. *Mathews*, the like Point in *Mathews* v. *Bowtel.* 3 *Keb.* 218.

Other Caſes where the Declaration hath been held good in this Action, relating to

W. Jones 326. *Netters* v. *Seabourne.* Stopping of Lights.

2 *Show.* 507. *Glynne* v. *Nichols.* Diverting a Water-courſe.

2 *Ven.* 292. *Chapman* v. *Flexman.* For not grinding at the Plaintiff's Mill.

2 *Ven.* 78. *Chamberlain* v. *Cooke.* An Action againſt a common Carrier for loſing Goods, &c.

2 *Ven.* 186. *Warren* v. *Saint-hill.* For Diſturbance in a Way.

2 *Cro.* 43. *Dent* v. *Oliver.* For Diſturbance in taking Toll, without ſhewing by Grant, Title or Preſcription to the Fair.

2 *Cro.* 604. *Dawny* v. *Dee.* } To a Diſturbance of a Seat in the
2 *Syd.* 203. *Stephens* v.——— } Church.

2 *Cro.* 255. *Aſh* v. *Brudnell.* In an Action for tearing the Seal of a Deed.

2 *Cro.* 263. *Wrey* v. *Veſper.* }
Stile 371. *Harris* v. *Tooker.* } To Diverting a Water-courſe.

Stile 421. *Kemp.* v. *Gard.* For not grinding at the Plaintiff's Mill.

Stile 19. *Long* v. *Bennet.* For not ſuffering the Plaintiff to take away *unam acram Ligni* bought by the Plaintiff of the Defendant.

Stile 50. *Lodge* v. *Weeden*, *All.* 22. *S. C.* In an Action for killing ſeveral infected Cattle, and throwing them upon the Plaintiff's Land.

Stile 303. *Wood* v. *Topham.* In an Action *Quare filiam & Hæredem rapuit.*

Stile 342. *Gough* v. *Cann.* In an Action brought for a Reſcue.

1 *Keb.* 825. *Prior* v. *Tuffs.* For negligently keeping Fire.

4 *Mod.* 9, 10, 11. *Cudlip* v. *Randall.* *For the like.*

1 *Lutt.* 116. *Reynolds* v. *Hewett.* An Action for Dilapidations.

2 *Saund.* 400. *Smith* v. *Martin.* For doing Damage to the Wall of the Plaintiff's Garden, by digging too near the Foundation.

2 *Syd.* 34. *Clovell* v. *Cardinall.* For not adminiſtring the Sacrament, but refuſing it to the Plaintiff.

2 *Keb.* 308. *Wimberley* v. *Tampling.* For reſcuing a Diſtreſs for Rent.

2 *Keb.* 114. *Gibs* v. *Oſbaſton.* For Toll for a Light-houſe for Ships.

2. *Keb.* 221. *Bray* v. *Holtby.* For not repairing a Gutter.

2 *Keb.* *Loanes* v. *Richardſon.* For building a Wall which hinder'd the Plaintiff's Proſpect.

1 *Keb.* 260. *Weſton* v. *Hortall.* Where a Preſcription for Occupiers to repair was held ill.

1 *Keb.* 599. *Lightfoot* v. *Salt.* For erecting a *Nuſance* in making a Swine-Sty.

1 *Keb.* 584. *Smith* v. *Trimnell.* For Continuance of a Wall which ſtopp'd the Plaintiff's Lights.

Allen 84. *Cooper* v. Sir *John.* For throwing down Hedges, and the Cattle on an adjacent Common came into the Plaintiff's Fields.

1 *Cro.* 153. *Honeywood* v. *Husbands.* A Preſcription for a Title for Common not well ſet forth.

Gouldſb. 132. *Pearce* v. *Barker.* How a Copyholder muſt preſcribe.

Claydon v. *Horſey.* The ſame Point.

343. *Gouldſborough* v. *Sheene.* Where the Declaration was held good in an Action brought by a Commoner, and ſeveral Exceptions taken.

348. *Lee* v. *Griſſel.* The Declaration not alledging how he loſt his Common, and therefore ill.

Hutton 71. *Bickner* v. *Wright.* The like Point.

2 *Lev.* 246. *Stables* v. *Mellon.* Where a Preſcription by a Corporation was adjudged good.

Modern Caſes 19. *Crowder* v. *Oldfield.* A Preſcription by a Copyholder for Common, where ill.

2 *Lev.* 148. Sir *John* v. *Moody.* An Action for a Diſturbance of a Way to a Wood of which the Plaintiff was ſeiſed in Fee, without any Preſcription as to the Way.

Other Inſtances where Declarations have been held ill relating to the following Particulars.

2 *Roll's Rep.* 346. *Lee* v. *Griſſell.* For Erecting Coney-burrows.

1 *Ven.* 167. *Coriton & al'* v. *Lithby.* For not grinding at the Plaintiff's Mill.

2 *Ven.* 138. *Dickman* v. *Allen.* For not folding Sheep upon the Plaintiff's Waſte.

2 *Cro.* 158. *Blithe* v. *Topham.* For digging a Pit in a Common, whereby the Plaintiff loſt his Mare.

2 *Cro.* 505. *Bennus* v. *Guildley.* For ſuing the Plaintiff to Execution after a Releaſe.

Stile 300. *Cantrell* v. *Stephens.* For Diſturbance of a Way.

Stile 162. ——— v. *Phillips.* To an Action for an Eſcape.

Stile 289. *Chapman* v. *Brook.* } In an Action for Diſturbance of the
1 *Keb.* 490. *Bick* v. *Edwards.* } Plaintiff's Common.

2 *Keb.* 350. *Greatrickes* v. *Brookhouſe.* }
2 *Keb.* 838. *Miller* v. *Clerke.* } The like Point.
2 *Mod.* 274. *Biret* v. *Wilſon.* }

1 *Mod.* 6. Corporation of *Darby.* A Preſcription by the Corporation of *Darby*, for Cattle without Number.

3 *Lev.* 266. *Winford* v. *Woolaſton.* For Diſturbance of a Way, which the Plaintiff had a Right to, without laying a Preſcription.

1 *Lutt. Blockley* v. *Slater.* } Where a Declaration for the Diſturbance
Jones v. *Hamond.* } of a Way was held ill.

Palmer 161. *Snelgrave* v. *Brograve.* Where two brought an Action for a Diſturbance of their Seat in the Church.

1 *Cro.* 112. *Jackſon* v. *Mordant.* } See divers Exceptions to the Decla-
Broome v. *Mordant* } rations in theſe two Caſes for divert-
} ing a Water-courſe from a Mill.

1 *Cro.* 19. *Weſtbourne* v. *Mordant.* Several Exceptions to a Declaration, for cauſing Water to overflow the Plaintiff's Meadow.

1 *Cro.* 751. *Leeds* v. *Shakerby.* See another Exception to the Declaration for diverting a Water-courſe.

2 *Lev.* 156. *Terry* v. *Stredwick.* In an Action upon the Caſe for obſtructing a Water-courſe.

Where a Declaration was held ill in an Action for erecting a Nuſance in a River. *Hob.* 193. *Biccott* v. *Ward.*

What ſhall be intended in a Declaration for a Nuſance in obſtructing the Light after a Verdict. 1 *Keb.* 584. *Smith* v. *Trimnell.*

Where it need not be alledged in the Declaration for a Nuſance, that the Houſe is an antient Houſe. 1 *Keb.* 589. *Lightfoot* v. *Salt.*

Where the ſpecial Damage was ſufficiently alledg'd in a Declaration for a Nuſance of a publick Nature. 1 *Keb.* 847.

Where a Declaration was held ſufficient after a Verdict in an Action for not repairing a Gutter. 2 *Keb.* 221. *Bray* v. *Holtby.*

Where the Court inclined the Declaration to be inſufficient, after a Verdict, in an Action for obſtructing the Light. *Loanes* v. *Richardſon,* 2 *Keb.* 611.

Where the Declaration was held ſufficient in the ſame Action after a Verdict. *Roſwell* v. *Prior, Carthew* 454.

57. An Action againſt a Carrier was brought for loſing the Goods without reciting the Cuſtom; *Q.* if good. 1 *Syd.* 245. 1 *Co.* 96, 168. 2 *Co.* 224.

58. Upon a Sale of Wine, the Vendor affirmed it the beſt Wine in *England*; in an Action upon this Affirmative it ought to be averred, that there was as good or better Wine in *England.* *Noy* 48.

59. In an Action on the Caſe, the Plaintiff declared on the common Cuſtom, That Lightermen ought ſo to order their Lighters, as not to damnifie the Goods they carried; that the Defendant being a Lighterman ſpoil'd his Goods by letting Water come to them. 'Twas objected, that the Plaintiff had not ſhew'd in his Declaration, that the Defendant was a common Lighterman, and that it was not preciſely ſhewn how they were ſpoiled; but the Plaintiff had Judgment. *Palm.* 528. *Symons* v. *Darknell.*

60. If a Carrier takes Goods to carry to *D.* and they in a common Inn are ſtolen, the Owner of the Goods, and not the Carrier ſhall have an Action for them. *See Daliſon* 8. *and Quære.*

61. Tho' in Actions againſt Carriers, generally 'tis laid to be by the Cuſtom of the Realm; yet it is indeed the Common Law, and the Declaration is good without ſetting forth the Cuſtom, tho' it is the more uſual Way; and according to ſome Opinions the beſt to ſet forth the Cuſtom. *Hob.* 17. *Rich* v. *Kneeland.* 2 *Syd.* 245. *Mathews* v. *Hopkins*; 1 *Mod.* 227.

62. In an Action againſt a common Carrier, the Plaintiff declared that he was poſſeſſed of divers Goods, (*viz. Quatuor poculis argenteis, uno poculo argenteo, duabus ſeriebus Aurearum Tibularum,* (*Anglice,* Sets of gold Buttons) *una ſerie Cyanorum & Granatorum,* (*Anglice,* a Set of Turks and Garnets) and of divers other Things in the Declaration mentioned; and that he delivered them to the Defendant to carry from *Bury St. Edmund's* to *London,* there to be ſafely delivered to the Plaintiff; and that he paid

the Defendant three Shillings for the Carriage, and that the Defendant afterwards through Negligence loſt them; the Defendant pleaded Not guilty, and after a Verdict for the Plaintiff, it was moved in Arreſt of Judgment, that the Declaration was inſufficient. *Firſt*, He declares for four ſilver Pots, and then afterwards of one ſilver Pot, and doth not ſay, *uno alio poculo*, and the ſame Omiſſion there is in divers other Parts of the Declaration; *ſed non Allocatur*; for if for want of the Word *alio* or *aliis*, the Thing ſhall be taken to be the ſame, and a Tautology; then the Jury ſhall not be ſuppoſed to have given Damages for the Things ſo laid; and if in Conſtruction they are to be taken as divers Pots, then Damages are well given for them.

Secondly, And that which was moſt inſiſted on, was the Incertainty of a Set, and not ſaid how many Turkey Stones, and how many Garnets; as an Action of Trover, *pro ducentis ovibus matricibus & agnis*, has been held naught, for not ſetting forth how many Ewes, and how many Lambs.

But the Court here held the Declaration well enough; for a Set is a ſufficient Certainty, being intended to be well known to thoſe that deal in ſuch Things, and in what Number ſuch precious Stones are placed in ſuch Sets. 2 *Ven.* 78. *Chamberlain* v. *Cook*.

63. *Maſon* brought an Action againſt *Grafton* for Goods imbezilled out of his Inn, and found for the Plaintiff; in Arreſt it was excepted, that he had not alledged it to be *in Communi Hoſpitio*, (*Quære* if both in the Writ and Declaration); yet becauſe the Declaration laid the Cuſtom for Common Inns, and then laid that he was *Hoſpitatus in Hoſpitio*; the Plaintiff had Judgment, for it ſhall be intended, that it is *Domus non Hoſpitium*, if it be not *Commune*. *Hob.* 245. *Maſon* v. *Grafton*.

64. In an Action againſt the Sheriff, who had a *Capias* to arreſt *A.* it was alledged in the Declaration, that the Sheriff *potuiſſet arreſtare, &c.* but refuſed, and falſly returned *Non eſt inventus*; after a Verdict, the Declaration was held good, without averring how he might have arreſted him, for that he was in his View, or the like, but it had been bad upon a Demurrer. *Jones, Car.* 2. 40. *Fiſh* v. *Aſten*.

65. Where a Declaration in an Action of Eſcape againſt the Sheriff was held Good upon a Writ of Error. *T. Jones* 217. *Atkins* v. *Joy*.

What Declarations have been held Good, and what not, in Actions for an Eſcape.

2 *Cro.* 288. *Burton* v. *Eyre*.
561. *Pigot* v. *Rogers*.
5 *Mod.* 413. *Odes* v. *Clarke*.
1 *Lutt.* 110. *Stanton* v. *James*.
121. *Slipper* v. *Maſon*.
2 *Bulſt.* *Barnes* v. *Cary*, & *al'*.
Palmer 425. *Dickſon* v. *James*.

1 *Cro.* 5. Sheriffs *of Norwich* v. *Bradſhaw*.
158. *Appleton* v. *Burr*.
1 *Show.* 162. *Ridings* v. *Edwin*, & *al'*.
Mod. Caſes 72. *Michelſon* v. *Cawſey*.
Stile 297. *Drinkwater* v. *Pack*.

What Declarations have been held Good, and what not, for Diſturbances of Officers.

Where a Declaration was adjudg'd good, in an Action for Diſturbance of the Plaintiff as Farmer of a Fair in taking his Toll. *Owen* 109. *Eſcot* v. *Lanceny*.

3 *Cro.* 16. *Cook* v. *Tounger*. For diſturbing the Under-Steward of a Manor-Court in the Enjoyment of his Office.

3 *Cro.* 258. *Walker* v. *Lamb*. For diſturbing the Plaintiff in the Exerciſe of his Office of the Official of an Archdeaconry.

3 *Cro.* 279. *Young* v. *Steel.* For diſturbing the Plaintiff in the Exerciſe of his Office of Regiſter in *Rocheſter.*

2 *Cro.* 241. *Kent* v. *Elwis.* For reſcuing the Defendant taken in Execution

330. *Child* v. *Lenthall.* In an Action for an Eſcape of one in Execution brought againſt the Marſhal.

Thirdly, **Of the Pleadings.**

1. An Action upon the Caſe was brought for ſtopping up three Lights, and the Defendant juſtified the Stopping of two, *abſque hoc*, that he ſtopp'd three; this Plea is ill, becauſe the Inducement goes but to Part, and yet the Traverſe to all Three; and in an Action upon the Caſe, a Man ſhall recover *pro tanto*; but here he is ſecluded from that Advantage, but the Defendant ſhould plead Not guilty to one, and juſtifie for the two other. 1 *Saund.* 268. *Yelv.* 225.

2. In an Action on the Caſe, the Plaintiff declared that he was ſeiſed of a Meſſuage, and ſeveral Lands in the Pariſh of *Dale*, and that he and all whoſe Eſtate he hath, have uſed to have Right of Common, for all commonable Cattle *Levant* and *Couchant* upon the Premiſſes, in a certain Meadow there called *Darpmore Meadow*, and in a certain Place called *Cannock Wood*. That the Defendant *Præmiſſorum non ignarus*, had incloſed the ſaid Places in which the Plaintiff had Right of Common, and likewiſe put in his Cattle, as Horſes, Cows, Hogs, Geeſe, *&c.* ſo that he could not *in tam amplo & beneficiali modo* enjoy the ſame.

The Defendant, as to the Incloſure and putting in of his Hogs and Geeſe, pleaded Not guilty; and as to the Reſidue that the Lord *Paget* was ſeiſed of a Meſſuage of 300 Acres of Land, 40 Acres of Meadow, and 100 Acres of Paſture, and likewiſe of *Darpmore Meadow* and *Cannock Wood*; and being ſo ſeiſed, did by Deed of Bargain and Sale inrolled, in Conſideration of 2000 *l.* convey the ſaid Meſſuage, 300 Acres of Land, 40 Acres of Meadow, and 100 Acres of Paſture to the Defendant and his Heirs; and by the ſame Deed did grant unto him all Ways Commons and Emoluments whatſoever to the ſaid Meſſuage and Premiſſes belonging, or there withal uſed, occupied, or enjoyed, or taken as Part, Parcel or Member thereof; *Virtute cujus* the Defendant became ſeiſed of the Premiſſes; and that the ſame were leaſed and demiſed for Years by the ſaid Lord *Paget*, and all thoſe whoſe Eſtate he had, *a Tempore cujus contrarii Memoria Hominum non exiſtit*; and that the Tenants or Occupiers thereof, *a Tempore cujus, &c.* uſed to have Common in *Darpmore Meadow*, and *Cannock Wood*, for all commonable Cattle *Levant* and *Couchant* upon the Premiſſes, and uſed to put in their Cattle into the ſaid Places, in which, *&c. Virtute cujus* the Defendant having Right, did put in his ſaid Cattle into the ſaid Places to take Common there, and averred that there was Common ſufficient, both for the Plaintiff and himſelf. To this Plea the Plaintiff demurred.

The Court were all of Opinion, that tho' the Plea did amount to the General Iſſue, yet for that Reaſon alone the Plaintiff had no Cauſe of Demurrer; for the Defendant may well diſcloſe the Matter of Law in pleading, which is a much cheaper Way, than to have a Special Verdict, and that this is on the ſame Reaſon of giving Colour in pleading; but if the Matter, by which the Defendant juſtifies, be all Matter of Fact, and Proper for the Trial of a Jury, then the Defendant ought to plead the General Iſſue. See the Judges Arguments in this Caſe, 2 *Mod. Rep.* 274. *Birch* v. *Wilſon.*

3. In an Action on the Caſe for a Seat in a Pariſh Church by Preſcription as appendant to a Houſe, without Allegation of the Repairs; the Defendant pleads a Preſcription in him and his Anceſtors, and traverſes the Preſcription alledged by the Plaintiff. *Per Cur.* The Traverſe is impertinent,

pertinent, and the Caſe reſts only on the Diſturbance; and Judgment was given after a Verdict by the whole Court for the Plaintiff; and a Difference was taken between a Prohibition and an Action; and the Caſe between *Buxton* and *Baker* in *B. R.* was cited and agreed to have been adjudged upon this Difference. *Bradbury* v. *Burch*, *Tho. Jones* 3.

4. Where an Action was brought for ſtopping a Water-courſe with a *Continuando*, and the Plaintiff himſelf had abated the *Nuſance*, which the Defendant had pleaded, and the Plaintiff had confeſs'd by his Demurrer; the Court were of an Opinion that it was not a good Plea, and took this Difference between a *Quod permittat*, or an *Aſſiſe* for a *Nuſance*, and an Action on the Caſe for the ſame, for the End of a *Quod permittat*, or an *Aſſiſe*, was to abate the *Nuſance*, but the End of an Action on the Caſe was to recover Damages; therefore though the Nuſance was removed, the Plaintiff is entitled to his Damages that accrued before; and 'tis uſual in Actions on this Nature, to lay the *Continuando* for longer Time than the Plaintiff can prove, but he ſhall have Damages for what he can prove; and ſo here he ſhall recover the Damages which he ſuſtain'd before the Abatement; and thereupon Judgment was given for the Plaintiff. 2 *Mod. Rep.* 253. *Kendrick* v. *Bartland.*

5. In an Action upon the Caſe for diverting a Water-courſe, where the Plaintiff preſcribes for a Water running in a Place call'd *J.* thro' two Cloſes call'd *Blackacre* and *Whiteacre*, to the Plaintiff's Meſſuage, and that the Defendant, in order to hinder the Water from running there, dug a Ditch, by which, *&c.*

The Defendant pleads, and after ſaying by Way of Proteſtation, that in Summer Time the Water could not run to the Plaintiff's Meſſuage, preſcribes, that he is ſeiſed in Fee of the ſaid two Cloſes called *B.* and *W.* and that they are Half a Mile Diſtant from the Plaintiff's Meſſuage call'd *B.* and that the Defendant, and all thoſe whoſe Eſtate he hath, uſed to water their Cattle in the ſaid Cloſes; and that for the Conveniency of watering their Cattle, they did (as they had a Right to do) dig a Place to water their Cattle, as often as there was a Neceſſity for them ſo to do.

It was held that this was an ill Plea, for the Defendant had neither confeſſed and avoided, or traverſed the Matter in the Declaration; and beſides a Preſcription pleaded againſt a Preſcription is never good without a Traverſe. *Murgatroid* and *Law*. *Carthew* 117. *Paſ.* 2 *W.* & *M.*

6. Where a Plea of Juſtification for a Way was held ill. 1 *Lutt.* 114. *Langhton* v. *Ward.*

7. In an Action for keeping a Dog, *Sciens eum ad mordendum oves conſuetum*, the *Sciens* is not to be traverſed, tho' 'tis to be proved on the general Iſſue, 4 *Co.* 18. for the *Sciens* is not any direct Allegation, or to be alledged in any Place, therefore not traverſable. 5 *Co.* 77. *Plow.* 76.

8. An Action upon the Caſe againſt one for digging ſo near the Foundation of his Houſe that it fell down, and he loſt the Profit of his Houſe and Land for 11 Months; the Defendant pleads in Bar a Recovery in an Action againſt him, for digging under the Foundation, *per quod* his Houſe fell down, and he loſt the whole Profit of his Houſe for 7 Months; and averred the Damages were given for the ſame, *&c.* and held a good Plea. 3 *Lev.* 180.

9. The Defendant granted the Plaintiff Leave to cut down ten Trees; within three Years after the Grant, the Plaintiff having cut ſome them, the Defendant in Conſideration he would forbear to cut the Reſidue, until after the three Years, *Aſſumpſit ſuper ſe*, that he would licenſe him to cut down ſo many as would amount to Ten after three Years; and alledges in Fact, that he had cut four, and the Defendant diſturbed him in cutting down the Reſidue; the Defendant pleads, that before the Promiſe ſuppoſed, he had cut down the ten Trees, *abſque hoc*, that at the Time of the Promiſe he had cut down four *tantum*; the Traverſe was adjudged

good; for every Matter in Fact alledged by the Plaintiff muſt be traverſed or avoided, and therefore the Cutting of the four Trees is traverſable; then the Defendant may well Traverſe the Allegation in the ſame Words as 'tis alledged. *Yelv.* 195. 2 *Saund.* 206.

10. An Action was brought for entring the Shop, and taking away his Goods by Virtue of a Commiſſion of Bankruptcy, by which he loſt his Trade and Credit; the Defendant pleads in Bar a Recovery in a former Treſpaſs for entring his Shop and taking his Goods; it was held no good Bar. *Stile* 3. 201.

11. If one juſtifies the Abating a *Nuſance*, he need not ſhew he did it orderly, and with as little Hurt as he could. *Salk.* 459.

12. Where it was held, that a Reſcue pleaded by the Sheriff, to an Action for an Eſcape upon Meſne Proceſs, was an ill Plea. *Moor* 852. *May* v. the Sheriffs of *London*; where the Court would not permit the Sheriffs of *London* to alter their Plea pleaded ſpecially, to a general Plea of Not guilty, in an Action brought againſt them for a falſe Return. *Stile* 417.

13. An Action upon the Caſe was brought againſt a Serjeant at Mace, for the Eſcape of one in Cuſtody, by Virtue of a *Proceſs* out of the Court of the Sheriffs of *London*, in an Action of Debt upon a Bond ſued there; and upon *Non cul.* it appear'd, that the Bond was made out of the Juriſdiction of the Court; and thereupon it was objected, That the Proceedings upon the Bond was *coram non Judice*; and all void; and the Serjeant was a Treſpaſſer, and they cited 2 *Bulſt.* 64. 2 *Mod.* 30. 1 *Roll.* 545, 809. 1 *Sid.* 125. 1 *Lev.* 95. *Hob.* 267. *Lut.* 935, 1560. 2 *Mod.* 196. *March.* 117. *Stat. Weſtm.* 1. *c.* 35.

Et per Holt Ch. Juſt. to which *Powell*, and the Reſt agreed, where an Inferiour Juriſdiction is confined to Perſons, as the Marſhalſea was to thoſe of the Houſhold, if it appears on the Face of the Declaration, that the Perſons that ſue are qualified to ſue, tho' in Fact they are not; yet if the Defendant does not plead to the Juriſdiction, but comes in and admits it, he ſhall never take Advantage of this afterwards, but is eſtopped and concluded; but if it is not averred in the Declaration, that the Perſon is qualified to ſue, and within their Juriſdiction all the Proceedings is void, and *coram non Judice*, and Treſpaſs lies againſt the Officer.

Secondly, Where the Inferiour Juriſdiction is confined to Place, *viz.* to all Contracts ariſing within a Diſtrict, tho' the Contract ariſes out of the Diſtrict, yet the Court may award *Proceſs*, and the Officer may execute it, unleſs it appear to him that it aroſe *extra Juriſdictionem*, as if this Bond had been dated at *York*, and that was the Caſe; 1 *Roll.* 809. but he is not bound to enquire either, whether there be a Cauſe of Action, or where it aroſe, and may proceed in his Duty, unleſs the contrary appear to him; and *Nota*; The Plaint is general without any Averment, *quod fuit infra Juriſdictionem*, but that is ſupplied by the Count; and if a Matter ariſes *extra Juriſdictionem*, and the Plaintiff declares of it as *infra Juriſdictionem*, the Defendant may plead to the Juriſdiction of the Court; and if that be over-ruled, may have a Prohibition on the Statute of *Weſtminſter*. But if he waves that, and pleads to the Merit, he can never then have a Prohibition, nor can he take Advantage of their Want of Juriſdiction; for by the Averment of the Count, and his own Admiſſion, he is eſtopped to ſay that it was a Matter that aroſe out of their Juriſdiction; it is impoſſible the Court ſhould know where a Tranſitory Matter ariſes, unleſs the Defendant acquaints them with it. *Judgment pro Quer'. Salk.* 201. *Lucking* v. *Denning*.

14. Where a Reſcue pleaded by the Sheriff to an Action of Eſcape upon *Meſne Proceſs*, was held a good Plea. 3 *Lev.* 46. *Gorges* v. *Gore*, 2 *Lev.* 144. *Hill* v. *Mountague*, *Noy* 40. *Walde* v. *Lambert*, *contra*. 1 *Cro.* 868. *S. C.* with that in *Noy*.

15. The Statute of Limitations is no Plea by the Sheriff to an Action brought for Money levied on a *Fieri facias*. 2 *Mod.* 212. *Cockram* v. *Welby*, 1 *Mod.* 245. *Cro. Car.* 297.

16. Where a Plea by the Sheriff, that the Defendant in the Original Action appear'd at the Return of the Writ, and the Replication likewiſe, were ſaid to be ill. 1 *Lutt.* 73. *Benſon* v. *Muſgrave*.

17. The Statute of *H.* 6. for taking Bail-Bonds is a good Plea to an Action brought againſt him for an Eſcape upon *Meſne Proceſs*; tho' he returns *parat' habeo Corpus*. *Baron* v. *Aldeworth*. *Cro. Eliz.* 624.

What Pleas have been adjudged ill in this Particular Action, relating to the following Particulars.

To an Action for deſtroying Common, by pleading the Grant of a Free Warren. *Timberley* v. *Grobham-How*, *T. Jones* 5.

A Juſtification, by Virtue of the Cuſtom of *London*, to An Action for Stopping up of Lights. 1 *Bul.* 115. *Hughes* v. *Keymiſh*.

To a Juſtification for Toll. *Cro. Eliz.* 227. *Ward* v. *Knight*.

To laying Wares in a Warehouſe of ſo great Weight, as that the Floor of the Plaintiff was broken down. *Cro. Eliz.* 285. *Edwards*'s Caſe.

To erecting Coney-burrows. *Cro. Eliz.* 547. *Bowlſton* v. *Hardy*.

A Plea to an Action for a Diſturbance of a Seat in the Church. 2 *Cro.* 604. *Dawny* v. *Dee*.

Pleading a Recovery in a former Action, to an Action for digging on the Plaintiff's Foundation. 3 *Lev.* 180, 181. *Barwell* v. *Kenſcy* and others.

To the Killing the Plaintiff's Maſtiff. 2 *Keb.* 237. *Wright* v. *Wranſcott*.

To a Juſtification for digging in a Common. 1 *Keb.* 390. *Cove* v. *Canthorn*.

Incloſing Part of the Common for the Enlargement of his Meſſuage. 1 *Lev.* 62. *Nevill* v. *Hamerton*.

A Plea as to the Incloſure Not-guilty, and as to putting in the Cattle preſcribes for the Tenants and Occupiers of thoſe Lands to which he conveys a Title. 2 *Mod.* 274. *Birch* v. *Wilſon*.

Where a Plea was held ill to an Action for diverting a Water-courſe. 3 *Lev.* 209. *Biddlesford* v. *Onſlow*.

What Plea was adjudg'd ill in an Action upon the Caſe for erecting a Nuſance. 3 *Keb.* 40. *Aylet & Ux.* v. *Onſlow*.

What have been held good Pleas, and what not in this Action, relating to the following Particulars.

An Action againſt the Sheriffs for an Eſcape upon *Meſne Proceſs*, and a Reſcue pleaded. 2 *Cro.* 419. *May* v. *Proby & al'*, *Anonymus*.

What was held an ill Plea by the Sheriff, to an Action for an Eſcape. *Ray* 100. *Clerk* v. *Molineux*.

Where a Replication was held ill in an Action for an Eſcape upon *Meſne Proceſs*. 1 *Lutt.* 131. *Whitrow* v. *Edwin, & al'*.

To an Action for an Eſcape, what Plea hath been adjudg'd good. 1 *Brownl.* 15. *Wilſon* againſt the Sheriffs of *London*. 1 *Cro.* 67. *Clecott* v. *Dennys*. 1 *Cro.* 624. *Baron* v. *Aldeworth*.

Plea, that the Defendant was let at large upon a Writ of Privilege, and ill. 1 *Cro.* 893. *Colſton* v. *Roſs*.

An Action upon the Caſe was brought againſt an Innkeeper of *Stratton Audley*, in the County of *Oxon*, and the Plaintiff declared upon the common Cuſtom of the Realm, that an Innkeeper ſhould keep the Goods of his Gueſts ſafely, *&c.* The Defendant pleaded, that when the Plaintiff lodged with him, he was ſick, and of *non ſane Memory*, by Occaſion of his Sickneſs whereof he then languiſh'd; and it was thereupon demurred and adjudged without Argument for the Plaintiff; for the Defendant, if he will keep an Inn, ought at his Peril to keep ſafely his Gueſt's Goods; and altho' he be ſick, his Servants then ought carefully to look to them; and to ſay he is of *non ſane Memory*, is no Excuſe; it lieth not in him to diſable himſelf, no more than in Debt upon an Obligation; wherefore it was adjudged for the Plaintiff. 1 *Cro.* 622. *Croſs* v. *Andrews*.

Fourthly, Of the Trial, Evidence and Damages.

1. Where a Trial was put off in an Action brought againſt a Woman's Father for taking her away from her Huſband, till the Marriage was determined in the Court Chriſtian then in Litigation there. 1 *Ven.* 37. *Anonymus*.

2. What has been held a Mis-trial in an Action for Diſturbance of Common. *Richmond* v. *Webb*. *Cro. Eliz.* 114.

3. Where the Court would not grant a new Trial in this Action, where the Jury gave a Verdict for the Defendant upon doubtful Evidence. 5 *Mod.* 87. *Smith* v. *Crompton*.

4. Where a new Trial was denied in an Action for miſuſing a Horſe, upon an Allegation that the Jury toſs'd up, whether the Verdict ſhould be for the Plaintiff or Defendant. 1 *Keb.* 811. *Prior* v. *Powers*.

5. What would have been a Mis-trial in an Action brought by one of the Judges of the Sheriff's Court, for diſturbing him in taking the Fees of his Office. *Hard.* 311. *Proctor* v. *Phillips*.

6. Where the Jury in an Action upon the Caſe for a falſe Return to a *Mandamus*, gave a Verdict for the Defendant againſt the Opinion of the Court; and a Motion was made for a New Trial after the Trial at Bar; and *Holt* ſaid he had never known the like, and that he would have but little Value for the Verdict of a Jury, that would not at a Judge's Deſire declare the Reaſon which had induc'd them; and that as the Judges do publickly declare the Reaſons of their Judgments, and thereby expoſe themſelves to the Cenſures of all that be learned in the Law, and yet there is no Law obliges them to it, but it is for publick Satisfaction; ſo the Jury ought for the ſame Reaſon to declare the Reaſon of their Verdict when required by the Court; notwithſtanding all this, it being a Trial at Bar, the Court would not grant a new Trial. *Farreſley's Rep.* 37. *Gay* v. *Groſs*.

7. Whether the Action abated where one of the Defendants died after the *Venire*, and before the Day of *Niſi prius*, in an Action of Eſcape brought againſt them as Sheriffs. 1 *Cro.* 625. *Bennion* v. *Watſon*.

8. Where it was held that there was no proper *Venue* in an Action for abuſing a Horſe in a Journey. *Ray.* 187. *Horſeley* v. *Potter*. 2 *Keb.* 620.

9. Where the *Venue* was denied to be chang'd in an Action for a Reſcue. *Chute* v. *Hall*. 1 *Keb.* 273.

10. Where the *Venue* was objected to, in an Action for Diſturbance of Common. *Hob.* 326. *Clerke* v. *Wood*. *Hutt.* 391. *Jones* 2. 1 *Keb.* 279. *Hart* v. *Hunblet*.

11. From whence the *Venue* ſhall ariſe in an Action againſt the Sheriff for not returning his Writ. 2 *Keb.* 362. *Mancer* v. *Smith*.

12. Where an Action upon the Caſe was brought againſt the Mayor, for refuſing to admit a Freeman's Vote at an Election of a new Mayor, and the Plaintiff is Nonſuited, the Defendant ſhall not have double Coſts, it not being within the Intent of the Statute. 2 *Lev.* 250. *Herring* v. *Finch*.

13. What was adjudg'd no Mis-trial by Reaſon of an Improper *Venue*. 2 *Mod.* 23. *Naylor* v. *Sharpleſs*.

14. That an Executor ſhall not pay Coſts, who is Nonſuited in an Action brought againſt the Sheriff for an Eſcape upon an *Outlawry*. 2 *Cro.* 360. *Barrett* v. *Winchcomb*, 1 *Roll's Rep.* 78.

15. Where the *Venue* ſhall ariſe from in an Action for an Eſcape. *Richbell* v. *Goddard.* 1 *Cro.* 271, 625. *Bennion* v. *Watſon.*

16. Whether a Freeman of a Corporation can be a Witneſs to prove a Right to take Toll for a Market within that Corporation. 3 *Keb.* 12. *Cook* v. *Baker.*

17. Where Evidence was held inſufficient, and upon a Demurrer thereto, in an Action upon the Caſe, for digging a Hole in the Highway, whereby the Plaintiff loſt his Gelding. *Stile* 335.

18. An Action was brought againſt a Man for reſcuing a Priſoner, from an Arreſt, and the Defendant in the Action, *i. e.* the Priſoner, was admitted to be an Evidence for the Defendant, but his Credit left to the Jury. *Wilſon* v. *Gary.* *Mod. Caſes* 211.

19. Where a Variance between the Title given in Evidence and that ſet forth in the Declaration, was held not to vitiate. 1 *Cro.* 335. *Ferrer* v. *Johnſon.*

20. On Iſſue of Levancy and Couchancy, it is enough to prove he fed them in the Yard. *Salk.* 169.

21. An Action upon the Caſe was brought againſt the Defendant late Sheriff of *Eſſex*, and the Declaration was; that whereas the Plaintiff had recovered againſt *Pyndar* 100 *l.* and had ſued out a *Fieri facias*; that the Defendant, by Virtue thereof levied 28 *l.* and had not returned the Writ, nor payed the Money to the Plaintiff; the Defendant pleaded Not guilty; and now upon Evidence to the Jury, it was proved, that the Writ was delivered to *Cowell* the Defendant, Under-Sheriff the ninth of *November*, 34 *Eliz.* and the ſame Day, a Writ of Diſcharge was delivered him, dated the ſixth of *November*, 34 *Eliz.* but becauſe he did not prove that he had Notice of this Writ of Diſcharge before the Execution ſerved, the Court held clearly that he was yet Sheriff, and chargeable to the Plaintiff's Action; the Defendant alſo ſhewed the Indenture, whereby he made *Cowell* his Under-Sheriff, wherein was an Exception, that he ſhould not meddle with the Execution of any Writ above the Sum of forty Pounds, ſo as to that he was not his Under-Sheriff, but he did it *de ſon tort Demeſne*, and the Defendant is not chargeable therewith; but all the Court held it to be a void Exception; for when he made him his Under-Sheriff therein, it was included that he ſhould execute all Writs; and therefore the Exception is repugnant and void. *Thirdly*, it was alledged that this was not a due Execution; for *Pynder* had made a Deed of his Goods before, *&c.* and ſhewed the Deed dated the ſame Day of the Writ of Execution, *& per totam Curiam*, although the Gift was *bona fide* made, yet Execution might be taken of thoſe Goods; for by ſuing forth the Execution, all the Defendant's Goods are liable, ſo as no Gift of the ſaid Goods, the Day of the Date of the Writ, or afterwards, can ſtop the Execution. Wherefore they reſolved the Jury accordingly, without enquiring of the Fraud, and they found for the Plaintiff. *Vide* 4 *H.* 6. 7. 17 *Aſſ. Plac.* 2. 5 *Eliz. Dyer* 219. 1 *Cro.* 440. *Boucher* v. *Wiſeman.*

22. In pleading, the Preſcription was for Common for Sheep, and Iſſue join'd thereon, and the Jury finds Common for Sheep and Cows too; and it was adjudg'd, that the Iſſue was found for the Plaintiff, who claim'd the Common. *Burges* v. *Steer*, 1 *Show.* 347.

23. Where the Want of a Requeſt to remove a *Nuſance*, was adjudg'd to be cured by a Verdict. *Tomlin* v. *Fuller*, 2 *Keb.* 583.

24. What ſhall be intended after a Verdict, in an Action for diverting a Water-courſe. *Telv.* 161. *Stone* v. *Bromwich.*

25. An Action upon the Caſe was brought for ſtopping a Light. *Winnington* excepted in Arreſt of Judgment, that *Stagg* poſſeſs'd of a Term aſſigned to *Cornelius*, who the 29th of *September*, 23 *Car.* 2. aſſigned to Teſtator; and the Plaintiff as Adminiſtrator brings the Action for building a Houſe contiguous, and Damages are given for a Year before the

Title of the Plaintiff began; but it appearing the Light was ſtopt before the Teſtator's Time, and the Action is brought only for the Continuance after, 'tis well enough; but the Requeſt to remove being in the Teſtator's Time, and in his own likewiſe, the Damages are for all, and ſo ill, becauſe, there is no Remedy for the *Nuſance* in the Teſtator's Life-time, on 4 *Ed.* 3. though there be Colour for it; and ſo not like the Caſe of an Aſſignor, who can have Damages but for his own Time; and ſo it would be well enough; and Judgment was ſtaid. 2 *Keb.* 835. *Jefferſon* v. *Hutchins*.

26. Where a Verdict was held good in an Action for a Diſturbance in an Office, tho' the Title to the Office was ſomewhat variant from that in the Declaration. *Ferrer* v. *Johnſon*, 1 *Cro.* 335.

27. Torts are in their Nature ſeveral, ſo that one Defendant may upon the Trial be found Guilty, and the other not; but 'tis not ſo in Actions upon Contracts. 2 *Vent.* 151.

28. Whether an Action for an Eſcape be Local or Tranſitory. *Stile* 107. *Wright* v. *Martin*.

29. An Action upon the Caſe was brought for reſcuing Goods diſtrain'd for Rent, and the Plaintiff declared upon a Leaſe for Years, and that given in Evidence was a Leaſe for Years ſubject to a Quarter's Warning; this was held not to vary from the Leaſe declared on. *Mod. Caſes* 215. *Dod* v. *Monger*.

30. Where the Party was allowed full Coſts, tho' but one Penny Damages. 3 *Keb.* 31. *Brown* v. *Taylor*.

31. In an Action upon the Caſe for diſturbing the Plaintiff in the Enjoyment of a Church Seat, which he preſcribes for himſelf and Family, without ſaying that he uſed, or ought to repair it, or ſome other Conſideration; after a Verdict for the Plaintiff, the Declaration was held good; for without Reparation he cannot preſcribe, therefore it ſhall be intended to be given in Evidence; but upon a Demurrer it would have been naught. 1 *Syd.* 203.

32. In an Action on the Caſe for managing the Defendant's Ship ſo negligently, that it ran over the Plaintiff's Barge; the Declaration ſet forth, that he was poſſeſſed of the ſaid Barge, laden with divers Goods and Merchandizes; and Firſt, *Holt* Chief Juſtice would not ſuffer the Pilot to be a Witneſs, becauſe he was anſwerable to the Maſter, if faulty in ſteering. 2dly, He would not ſuffer any Damages to be recovered for the Goods, becauſe not ſet forth particularly; ſaying they ought to be ſet forth ſpecially; as where an Action is brought for burning his Houſe; ſo in Caſe for Words, *per quod* ſhe loſt her Marriage with *J. S. & aliis Perſonis*, he ſaid he would not ſuffer them to give in Evidence, a Loſs of Marriage with any Body but *J. S. Salk.* 287. *Martyn* v. *Hendrickſon*.

Fifthly, Of the Judgment and Execution.

1. Where a Judgment was arreſted, becauſe there was more comprized in the Writ than in the Declaration relating to an Annoyance by making a Ditch, *&c.* *Norton* v. *Palmer*, *Cro. Eliz.* 829.

2. A Writ of Error was brought upon a Judgment in the Common Pleas, in an Action upon the Caſe, for Diſturbance of the Plaintiff's Common, in a Place call'd the *Lakes*; and ſhews the Preſcription of Common, and the Diſturbance by digging 40000 Turfs, and making of a Fiſh-pond; and the Defendant pleaded that he was Lord of the Manor, and improv'd the ſaid ſeveral Parcels according to the Statute, leaving ſufficient Common in the Reſidue; Iſſue being thereupon, the Jury found *quoad* the Parcel where the Digging of the 40000 Turfs was, that the Defendant had not left to the Plaintiff ſufficient Common, and aſſeſſed Damages 5*s.* and Coſts; and *quoad* the Digging of the Fiſh-ponds, that the Defendant had left unto him ſufficient Common; and upon this Verdict

dict Judgment was given for the Plaintiff, for the firſt which is directly found againſt the Defendant; and for the other Part for digging of the Fiſh-pond Judgment for the Defendant, and the Plaintiff in *Miſericordia*. And hereupon the Error aſſigned was, that this Verdict was repugnant and void; and the Judgment being for the Defendant for Part is erroneous, and of that Opinion was *Berkley*, becauſe it is one intire Iſſue; But *Croke* held that the Verdict is good enough, for it is *in diverſis Reſpectibus*, and it may be he had ſufficient Common notwithſtanding the Fiſh-pond, and had not ſufficient in Reſpect of digging the Turfs; ſo the Damages to the Plaintiff is only by Reaſon of the Digging of Turf; and *Jones* doubted thereof. 3 *Cro.* 495. *Reeve* v. *Digby*.

3. An Action was brought, wherein the Plaintiff declared, that one *Veer* the 29 of *September*, 16 *Car.* 2. was retained as his Servant for nine Years, that he ſerved him five Years, that the Defendant the laſt Day of *October*, 21 *Car* 2. inticed him to depart the Plaintiff's Service; and that the firſt Day of *November* the ſame Year, the Servant departed, whereby the Plaintiff loſt the Profit of his Service. It appear'd that the nine Years were not then expired, for which Reaſon the Judgment was arreſted. For tho' it was an Error in the Jury, yet the Plaintiff was the Cauſe of it; for the Jury finding the Iſſue for the Plaintiff, they ought to aſſeſs the Damages, as the Plaintiff had alledg'd them in his Declaration; and there it appear'd, that the Plaintiff had alledg'd his Damages, as well for the Loſs of the Service, for the Remainder of the Term, as for the Procurement to depart. 2 *Saund.* 171. *Hambleton* v. *Veer*, *Ray.* 200. 1 *Lev.* 299.

4. Where the Court compell'd the Plaintiff to enter up his Judgment, that the Defendant might plead it to a new Action. *Hard.* 219. *Andrew's* Caſe.

5. The Plaintiff brought an Action on the Caſe for a Diſturbance in a Common, and declared, that he was poſſeſſed of a Meſſuage, and ſo many Acres of Land, with the Appurtenances in, &c. for a certain Term of Years yet to come and unexpired; and that *per totum idem tempus habuiſſet, & gaudere debuiſſet Communiam paſturæ pro omnibus averiis levan' & cuban', &c.*

Upon Not guilty pleaded the Cauſe was at Iſſue, and the Plaintiff had a Verdict; and Serjeant *Tremaine* moved in Arreſt of Judgment, becauſe the Plaintiff had not ſhewn any Title in himſelf, either by Grant or Preſcription; *ſed non allocatur*.

Chief Juſtice ſaid, this might be a good Exception upon a Demurrer, but 'tis cured by a Verdict. 4 *Mod. Rep.* 175. *Hill* v. *Gallop*.

6. An Action upon the Caſe was brought againſt the Defendant as Sheriff of *Kent*, reciting a Judgment at the Plaintiff's Suit, againſt *William Dyke* for 400 *l.* and a *Fieri facias* thereon deliver'd to the Sheriff; that tho' *Dyke* had ſeveral Goods and Chattels, yet he had neglected to ſeiſe them, and made a falſe Return of *nulla bona*; *non cul.* was pleaded, and on a Trial before the Lord Chief Juſtice *Holt*, the Caſe came out to be thus. *Dyke*, *Brown*, and others were Partners of ſeveral Sums of great Value, *Brown* being indebted, a *Fieri facias* was ſued out againſt him, and thereon theſe Goods were all ſeiſed, and in the Sheriff's Cuſtody, and conſequently not liable to the Plaintiff's Execution. It was held by *Holt* Chief Juſtice, that being once ſeiſed, and in Cuſtody of the Law, they could not be ſeiſed again by the ſame, or any other Sheriff, and if they were ſold thereon, ſuch Bargain would be void. It was held alſo, that though they had a Joint and Undivided Intereſt, yet only the Share, or Part of *Brown*, and no more, could be ſeiſed upon the Execution againſt *Brown*'s Goods; and conſequently *Dyke* had Goods, and ſo the Return was Falſe, and the Plaintiff had a Verdict and Judgment for 200*l.* being the Value of the Debt. 1 *Show. Rep.* 173. *Bachurſt* v. *Clinkard*.

Actions upon the Caſe, by and againſt Executors and Adminiſtrators.

AS the Caſes in the Reports relating to Executors and Adminiſtrators, are for the moſt part under the Title *Debt*, I ſhall not here treat of the Duty and Office of an Executor, what they may do, and what not; and of Aſſets, *Devaſtavit*, and other Matters incident thereto; but ſhall here confine my ſelf to the following Particulars, and refer you to the Title *Debt* for the Reſt, where the Reports ſhall be as copiouſly, and yet with as much convenient Brevity abridg'd as poſſible.

Firſt, **Of Actions upon the Caſe to be brought by and againſt Executors and Adminiſtrators.**

Secondly, **Of the Declaration by and againſt Executors.**

Thirdly, **Of the Pleadings.**

Fourthly, **Of the Iſſue, Trial and Evidence.**

Fifthly, **Of the Damages and Coſts.**

And Sixthly, **Of the Judgment and Execution.**

1. No Action lay for the Executors at Common Law, but ſuch as had their Commencement by a Contract, as Debt, Covenant, and the like, but not of Account; for that was given by the Statute of *Weſtm.* 2. *W. Jones* 173.

2. So likewiſe, no Actions lay againſt Executors at Common Law upon the ſimple Contract of the Teſtator, and the only Remedy was by a *Quo minus* in the Exchequer, whereby a Man might ſue the Executor there, becauſe when the Suit is commenced there by that Writ, it is the Suit of the King upon the Matter, and not of the Party; and the King might at Common Law ſue Executors, as in *Stradling* and *Morgan*'s Caſe. *Plow. Com. Fol.* 208. And when the Party ſued by *Quo minus*, the King was to have Execution of the Debt, and Damages recovered; and the Reaſon of the Caſe of 8 *H.* 6. is remarkable; for Suits upon a *Quo minus* are upon the Matter the Suits of the King. 2 *Roll's Rep.* 301.

3. The Statute of the 4th of *Ed.* 3. *cap.* 13. call'd the Statute *de bonis aſportatis in vita Teſtatoris*, gave an Action to an Executor for the Goods of the deceaſed being taken away; for before that Statute, the Executor could not have an Action of Treſpaſs; but if the Goods were not conſumed, he might replevy them, 34 *E.* 2. Tit. *Avowry*, 257. 17 *E.* 2. Tit. *Executor*, 105. So if *J. S.* took the Goods tortiouſly and died, and the Goods were conſumed, no Action of Treſpaſs lay againſt the Executor; but if the Executors had the Goods in their Poſſeſſion, then an Action of Detinue lay againſt them. 21 *H.* 6. 2. *W. Jones* 173, 174.

4. This Action upon the Caſe hath received more fluctuating Opinions and Reſolutions than any other Action whatſoever, not only from the Copiouſneſs of the Action, and the great Variety of Cauſes that are its Foundation, but from the many Prejudices it has been forced to ſtruggle with, before it arrived to the Maturity in which we now find it.

Before the Reſolution of *Slade*'s Caſe, in 4 *Cooke* 93. a Multitude of Opinions there are in the Books, that an Action upon the Caſe would not lie upon a Contract, where the Party might have had an Action of Debt; and the chief Reaſon that ſeems to be alledg'd againſt it is, becauſe in an

Action of Debt, upon a ſimple Contract, the Defendant was at Liberty to wage his Law; but in this Action upon the Caſe he cannot, and therefore ſaid they, who argued againſt this Action upon the Caſe, It ought not to be in the Power of a Plaintiff, by turning an Action of Debt, which is an Action of Property, into an Action upon the Caſe, which ſavours of Deceipt, and thereby takes away a Man's Birth-right, *i. e.* the Privilege of waging his Law; but the Arguments uſed for it ſeem to be more prevalent; one of which was, that it appear'd plain, that in the Regiſter, a Man had a Right to two ſorts of Actions for one and the ſame Thing, and had his Election to make Uſe of which he pleaſed; and therefore, becauſe he may have an Action of Debt upon a ſimple Contract, there is no Reaſon but that he may, if he pleas'd, have an Action upon the Caſe likewiſe.

And the Argument made uſe of with Regard to the Defendant's waging his Law, is rather an Argument in Favour of this Action, becauſe the Defendant, by his waging his Law, is to be benefitted in his Defence by his own Oath; and 'tis not to be ſufficiently lamented, but too apparently known, how ſlight a Regard Mankind pay to their Oath, than which nothing is, or ought to be more pure and ſacred; and though 'tis pretended, that very often a Man pays another Money when no body is preſent; and therefore if the Defendant could not wage his Law, he would be without Remedy to get diſcharged from a Debt he had already paid; but that is rather to be imputed to his own Fault; for no Man need to want a Teſtimony of his having paid Money, ſince ſcarce any Man will be ſo obſtinate and Churliſh as to deny a Receipt to another that pays him Money; but where-ever that happens, the Party may carry Witneſſes with him, and that will in ſome Meaſure obviate, if not totally remove any Difficulty that can be aſcribed for want of a Teſtimony of the Payment of Money.

And the Reſolution of this Caſe was made on a Conference with all the Judges of *England*, for the quieting and appeaſing the Diverſity of Opinions, that had been given of one ſide and the other.

But ſtill ſome great Men ſince that have been uneaſy at that Reſolution, as may appear in *Vaughan* 101. where he ſays, that tho' by that illegal Reſolution of *Slade*'s Caſe, grounded upon Reaſons not fit for a Declamation, much leſs for a Deciſion. The natural and genuine Action of Debt upon a ſimple Contract, be turned into an Action upon the Caſe, wherein a Man is deprived of waging his Law, it is an abſurd Opinion to think that therefore Debt demanded by it, ought to have Precedency to the Payment of a Debt due by ſimple Contract, but quite the Contrary.

For ſays he, Actions of the Caſe are all *Actiones Injuriarum* and *contra Pacem*; and it is not a Debt certain in reaſon of Law, that can be recovered by thoſe Actions, but Damages for the Injury enſuing upon the Breach of Promiſe, which cannot be known until a Jury aſcertain what the Damages are; therefore a Man did never wage his Law for a Demand incertain, for he could not make Oath of Payment of that which he knew, nor what it was, as conſiſting in Damages only.

Now, although the Jury give in Damages regularly the Money promiſed to be paid, yet that changeth not the Reaſon of the Law, nor the Form; for ſtill it is recovered by way of Damage, and not as a Debt is recovered.

Which ſhews (ſays he) the Action much inferiour and ignobler than the Action of Debt, which by the Regiſter is an Action of Property; and no Reaſon a Damage uncertain in its own Nature, ſhould be paid before a certain Debt by ſimple Contract, which were the firſt Debts, and will probably be the laſt of the World; for Contracts by Writing were much later; and there are many Nations yet, where Letters are unknown, and perhaps ever will be.

And (further ſays he) that which is ſo commonly now received, that every Contract executory implies a Promiſe, is a falſe Gloſs, thereby to turn Actions of Debt into Actions on the Caſe; for Contracts of Debt are reciprocal Grants; a Man may ſell his black Horſe for preſent Money at a Day to come, and the Buyer may, the Day being come, ſeize the Horſe; for he hath a Property then in him; which is the Reaſon in the Regiſter, that Actions in the *Debet*, and alſo in the *Detinet* are Actions of Property; but no Man hath Property by a Breach of Promiſe, but muſt be repaired in Damages.

5. In *Mich.* 9 *Jac.* 1. in the Caſe of *Legate* v. *Pinchion & al'*, it was reſolved by all the Judges, that an Action upon the Caſe might be brought againſt an Executor, upon a Promiſe of the Teſtator to pay Money due upon a ſimple Contract; and their Reaſon was, that the Debt riſing upon a Loan, and Promiſe of the Teſtator to pay, which was a Promiſe for the Payment of a mere Debt, and not to do any collateral Act; the Teſtator himſelf could not have waged his Law, therefore the Executor is chargeable in this Action, tho' there be no Averment that he had Aſſets; ſo that as yet the Judges had not come into the Reſolution, that the Executor was chargeable upon a collateral Promiſe of the Teſtator, where there was no Debt before.

6. But in *Trinity* Term, 13 *Jac. Rot.* 932. reported in 2 *Cro.* 417. in the Caſe of *Sanders* v. *Eaſterby*, it began to be reſolved, that the Action would lie upon a collateral Promiſe of the Teſtator, ſo adjudged upon a Writ of Error, and that Reſolution ſtands unimpeached.

7. And in *Trinity* the 14th of King *James*, *Cro. Jac.* 404. in the Caſe of *Berrisford* v. *Woodroffe*, it was reſolved, that an Action would lie againſt an Executor upon a collateral Promiſe of the Teſtator; and there was a Writ of Error brought upon that Judgment, and no Judgment given in Error, the Party dying *pendente Lite*.

8. And in the Caſe of *Clerk* and *Thompſon*, *Cro. Jac.* 571. there is a Caſe where an Action was brought, ſetting forth, That in Conſideration the Plaintiff would marry the Teſtator, he promiſed he would leave her worth 500 *l.* and alledgeth *in facto*, that he did not leave her worth 500 *l.* an Exception was taken in Arreſt of Judgment, after a Verdict for the Plantiff, that an *Aſſumpſit* lies not againſt an Executor upon a collateral Promiſe of the Teſtator, and that this perſonal Contract by the Intermarriage was determined; as if a Leaſe had been made, or as where the Debtor marries the Debtee, the Debt is determined; *ſed non allocatur*; for it never was a Duty in the Life of the Baron, nor ever could be releaſed by him; wherefore it was adjudged for the Plaintiff. *Note*; this Judgment was affirmed in a Writ of Error in the Exchequer-Chamber, and Juſtice *Winch* ſhewed, that ſuch a Caſe was before in the Common Bench, betwixt *Smith* and *Stafford*, where the Baron promiſed to the Feme before Marriage, that he would leave her worth 100 *l.* and three Juſtices there held the Action well lay againſt the Executor of the Baron; but the Lord *Hobart* to the Contrary.

9. *F.* brought an Action upon the Caſe upon an *Aſſumpſit*, againſt *C.* in the King's Bench, as Executor to *A.* and declared, that the Teſtator, in Conſideration of three Pounds paid to him, had promiſed and undertaken to deliver and diſcharge a Bond, whereby *F.* the Plaintiff was bound to him before that Time, and alledged the Payment of the three Pounds; and that the Teſtator had not delivered up the Bond, but had put it in Suit againſt the Plaintiff; and after a Verdict it was moved in Arreſt of Judgment, that an Action did not lie againſt the Executor, upon this *Aſſumpſit* of the Teſtator, it being a collateral Promiſe; and upon a Writ of Error in the Exchequer-Chamber, Judgment was given by *Hobart*, *Winch*, *Bromely*, *Denham*, *Hatton* and *Jones*, againſt the Opinion of *Tanfield* Chief Baron; and tho' the Argument of *Tanfield* was, that there were many Caſes in the King's Bench in his Time,

againſt charging an Executor upon a collateral Promiſe of the Teſtator; but otherwiſe upon a Contract for the Payment of Money; and it was allowed that there had been that Diverſity taken; yet ſince that, there had been many Precedents upon a good Reaſon, that if it lay againſt Executors upon a Contract of the Teſtator, wherein he could wage his Law, and they not, *a fortiori* it lies againſt them upon ſuch a Promiſe, where the Teſtator could not wage his Law. And if it had been a Covenant of the Teſtator, an Action would have lain againſt the Executor; and there is the ſame Reaſon that it ſhould lie upon a Promiſe of the Teſtator, where he receives a valuable Conſideration, and that it ſeems was the Reaſon of their Judgment; becauſe ſuch Promiſe is in the Nature of an executory Covenant, as to build an Houſe; and there was this Diverſity taken; when the Act of the Teſtator includes a Tort, there it will not extend to the Executor; as Trover and Converſion will not lie againſt the Executor for a Trover, *&c.* by the Teſtator, but otherwiſe of Contracts and Promiſes made by him upon a good Conſideration. *Palmer* 329, 330. *Carter* v. *Foſſett*, *Cro. Jac.* 662.

10. But where the Plaintiff declared, that ſuch a Day he was poſſeſſed of a Cow, of the Value of 4 *l.* 10 *s.* he deliver'd to the Teſtator to be re-deliver'd, who ſold it for 4 *l.* 3 *s.* 4 *d.* who converted the Money to his own Uſe; the Court held the Action not maintainable againſt the Executor. *Ray.* 71. *Bayly* v. *Birtles & al'*, *Exec' &c.*

11. Tho' the Executor is not chargeable for the Misfeazance of the Teſtator, yet he is for Non-feazance; as for Non-payment of Money levied upon a *Fi. Fa. Cro. Car.* 297, 539. *Dickenſon* v. *Guilford*; and this Difference is agreed, that Non-feazance is neither *Vi & Armis*, or *contra Pacem*. 9 *Co.* 50. *b.* and 'tis upon this Reaſon, that an Action will lie againſt an Executor, for the Teſtator's not ſetting out Tithes. *Regiſtr. Brev.* 48. *a.* *Vide Savile* 40. 3 *Leon.* 241.

12. It became a Queſtion in the Caſe of *Maſon* and *Dixon*, in *Hill.* 3 *Car.* 1. whether an Action would lie for an Eſcape in the Life of the Teſtator; *Hide* and *Jones* were of Opinion, that it would not, againſt the Opinion of *Dodderidge* and *Whitlock*; and the Reaſon they went upon was the Words of the Statute, which are thus: “Whereas in Times paſt Executors had no Action for a Treſpaſs done to their Teſtator; as of Goods and Chattles of the ſaid Teſtator carried away in their Life, and ſo ſuch Things hitherto have remained unpuniſhed; **It is Enacted**, That Executors in ſuch Caſes ſhall have Actions againſt the Treſpaſſors, and recover their Damage in like Manner, as they, whoſe Executors they were, ſhould have had if they were alive”. So ſaid they, that Statute gives a Remedy for Goods and Chattles only, and not for any other Treſpaſs; as Aſſault and Battery, Slander, Deceipt, falſe Impriſonment, and the like; even it gives no Remedy for Breaking a Cloſe, or Cutting of Trees *in Vita Teſtatoris*, according to 11 *H.* 4. 3. 18 *E.* 4. 16. 2 *R.* 3. 2 & 4 *E.* 4. 5. For theſe are not Goods and Chattles; and in this Caſe, although the Party was taken, to the Intent that the Teſtator might declare in Debt, yet it was a Treſpaſs to ſuffer him to eſcape, which was not a Taking of Goods and Chattles, and there was no Wrong to his Goods and Chattles; and the Caſes of a Trover, Raviſhment of Ward, and Ejectment, may be thus anſwer'd, that they are Injuries to Chattles, *&c.* and in Being, and ſo they held the Action not maintainable. *W. Jones* 174, 175. *Latch* 167. and in 3 *Salk.* 160, 161. it is ſaid, that an Executor may bring an Action *Quare blada creſcentia in Vita Teſtatoris meſſuit & aſportavit*, for Corn ſtanding is a Chattle, and the Mowing and Carrying it away was one entire Act; but if the Cutting was at one Time, and the Carrying away at another Time, then they are diſtinct Acts, and he muſt ſue for the Carrying away only. But an Executor cannot bring an Action of Treſpaſs *Quare herbam creſcentem in Vita Teſtatoris meſſuit & aſportavit*, becauſe Graſs growing is Part of the

Freehold, and not a Chattel. 1 *Vent.* 187. *Emerſon* v. *Emerſon.* Q. if it lies for a falſe Return made to the Teſtator's Writ. *Cro. Car.* 297.

13. See the following Caſe, where the Plaintiff as Executor brought an Action againſt the Defendant for a falſe Return; ſetting forth, That his Teſtator 4 *Jac.* had recovered Judgment againſt one *Smart* for 140 *l.* and that he ſued out a *Teſtatum Fieri facias* againſt him, which he delivered to the Defendant, who made an Execution, and levied the Goods to the Value of 101 *l.* and returned, that he had levied only 19 *l.* 19 *s.* which he was ready to pay; and that he had more Goods in his Poſſeſſion to the Value of 40 *l.* which remained with him for want of Buyers, whereas in Truth he had levied more. In arguing this Caſe it was ſaid, That an Executor may have an Action againſt the Sheriff for a falſe Return made in the Life of the Teſtator on a *Fieri facias*; ſo hath it been held that he may have an Action of Trover for any Converſion in the Life of the Teſtator; and likewiſe an Action of Eſcape upon Meſne Proceſs, becauſe the Body of the Priſoner being a Pledge for the Debt, the Executor might be otherwiſe without Remedy; ſo that tho' 'tis true that a Perſonal Action dies at Common Law with the Perſon; yet upon the Equity of the Statute of 4 *Ed.* 3. *cap.* 13. *de bonis aſportatis in Vita Teſtatoris*, a Wrong done to his Eſtate ſtill remains. 4 *Mod.* 403, 404. Judgment was given *niſi Cauſa*. *Williams* Executor of *Melliſh* againſt *Cary* Under-Sheriff of *Wilts*.

This Caſe is reported in *Comberbach* 322. where the Reporter ſays, that the Chief Juſtice *Holt* made this Diſtinction, that there is a plain Diverſity between the Caſe upon a Meſne Proceſs, which is merely perſonal, and doth not go to the Right, and this Caſe upon Execution, by which the Property of the whole Debt, when Goods are taken upon a *Fi. Fa.* is diveſted out of the Defendant; but if the Sheriff returns *nulla bona*, both Parties are concluded and eſtopped, and thereby the Property is reſtored to the Defendant; and as an Action would lie in that Caſe, ſo here in the principal Caſe it being found by Verdict, that the Goods were worth 41 *l.* over and above the 40 *l.* 'tis plain he returned *quoad reſid. nulla bona*; and I conceive (ſays he) the Executor may maintain this Action; for it is within the Equity and Reaſon of the Statute, and almoſt within the Words, and 'tis ſtronger than where the Body is taken.

Under this Caſe the following Remark is made; It muſt be intended in this Caſe, that it was proved to the Jury, that the Sheriff acted corruptly, and might then have had Money for the Goods, elſe it ſeemeth the Action lieth not.

14. It does not lie againſt an Executrix upon her Promiſe, who in Conſideration, that the Plaintiffs would accept her to be their Debtor for 60 *l.* due from the Teſtator to *A.* who aſſign'd it to the Plaintiffs; ſhe promiſed to pay to them the 60 *l.* for that is not a ſufficient Conſideration. 1 *Saunders* 210. *Forth and others* againſt *Stanton Executrix.*

15. It was held, that this Action would not lie againſt an Executor of an Infant, for the Debt of an Infant, tho' it was in Conſideration of Forbearance. *Latch* 21. *Stone* v. *Withipool.*

16. But where an Infant and another were bound in a Bond for the Debt of an Infant; the Infant at his full Age did aſſume to ſave the other Man harmleſs againſt the ſaid Bond; afterwards the Infant died, it was reſolved by the whole Court, that upon this *Aſſumpſit*, an Action upon the Caſe would lie againſt the Executors of the Infant: And if a Feme Covert, and another at her Requeſt had been bounden in ſuch a Bond, and after the Death of her Husband, ſhe had aſſumed to have ſaved the other harmleſs againſt ſuch Bond, ſuch *Aſſumpſit* ſhould have bound the Wife. *Godbolt* 138. *Caſe* 164. *Barton* v. *Edmonds.*

17. If a Widow after the Death of her Husband ſeiſe his Goods without taking Letters of Adminiſtration, altho' ſhe afterwards diſpoſe of them by Will, or otherwiſe, yet he that takes out Letters of Adminiſtration

tion to the Husband, may bring Trover for theſe Goods; for an Adminiſtrator may have Trover for Goods taken after the Death of the Inteſtate, and before Adminiſtration committed; and altho' he declares of Goods taken out of his own Poſſeſſion, whereas they were taken before he was Adminiſtrator, yet it was good enough; for the Adminiſtration ſhall have Relation to the Death of the Inteſtate. *Per Holt* Ch. Juſtice; tho' he thought it a hard Caſe. *Comb.* 451.

18. Where an Executor, or an Adminiſtrator, gives an Authority to one to receive Money for him, the Action is to be brought in his own Name and Right; but if it be payable to a Stranger without any ſuch Authority, the Executor hath his Election. *Comb.* 214.

19. If an Action be brought againſt a Special Adminiſtrator, and the Adminiſtration determines pending the Action, he ought to retain Aſſets for that Debt, which is attach'd againſt him. *Comb.* 465.

20. If an Executrix or Adminiſtratrix promiſes, that in Conſideration the Plaintiff would deliver her ſix Barrels of Beer, ſhe would pay as well 5*l.* due by the Inteſtate, as for the Beer; this is a good Promiſe to charge her out of her own Goods. *Cro. Eliz.* 406. *Wheeler* v. *Collier*.

21. Where the Plaintiff declared, that the Inteſtate was in his Lifetime indebted to him in ſuch a Sum, and the Defendant his Executor, in Conſideration the Plaintiff would forbear till he had proved the Will, promiſed to pay the Money; this Declaration was held good, tho' the Plaintiff did not ſhew how the Debt grew due. 2 *Bul.* 91. *Papworth* v. *Johnſon*.

22. Where the Defendant was Huſband to an Executrix, and the Teſtator had deviſed 7*l.* to his Son the Plaintiff; and after the Death of the Executrix, (the Defendant's Wife) the Defendant promiſed the Plaintiff, that in Conſideration he would forbear to ſue for that Legacy for ſuch a Time, the Defendant would pay it; here altho' the Defendant was ſuable in the Spiritual Court, inaſmuch as the Effects came to his Hands, yet the Defendant had a Matter in Diſcharge of himſelf in the Spiritual Court, that is, that he had deliver'd the Effects to the Adminiſtrator *de bonis non*; and the Court held that it was a void Conſideration, and Judgment was enter'd for the Defendant. 1 *Bul.* 45. *Smith* v. *Jones*.

23. Where a Man Marries a Feme Executrix, the Adminiſtration is devolved on him, and he may bring an *Aſſumpſit* by himſelf without the Wife. *Salk.* 117.

24. If a Man brings an Action as Adminiſtrator, when the Cauſe of Action is in his own Right, the Naming himſelf Adminiſtrator is Surpluſage. 1 *Ven.* 119. *Hornſey* v. *Dimock*.

25. An Adminiſtrator impowers *A.* to receive the Inteſtate's Debts, but a Will appearing, the Adminiſtration is repealed; the Executor may have an *Aſſumpſit* againſt *A.* as for Money received to his Uſe. *Salk.* 27.

26. The Plaintiff declared in an *Aſſumpſit*, that one *J. S.* deviſed a Legacy to the Plaintiff, and made the Defendant his Executor; and the Plaintiff intending to ſue him for it, the Defendant in Conſideration of Forbearance promiſed to pay the Plaintiff. The Defendant pleads ſeveral Bonds and Judgments, and that he had not Aſſets *ultra*; whereupon the Plaintiff demurred, and had Judgment without Argument; for his having Aſſets is not material, it being a Charge upon his own Promiſe in Conſideration of Forbearance. 2 *Lev.* 3. 1 *Ven.* 121.

27. Where the Plaintiff declared, that *S.* was indebted to ſeveral Perſons, and the Plaintiff was bound for him, and forced to pay the Debts; and the Defendant being Executor to *J. S.* in Conſideration that the Plaintiff would forbear to ſue him for the Money, the Defendant promiſed to pay it; and it was held a good Conſideration for the Promiſe of the Executor. 1 *Lev.* 71. *Scott* v. *Stephenſon*.

28. An Action was brought againſt an Executor, that *J. S.* had a Judgment againſt the Teſtator, and had made a Letter of Attorney to the Plaintiff to recover and receive the Money to his own Uſe; and the Defendant, in Conſideration that the Plaintiff would forbear to ſue out Execution, promiſed to pay it; tho' this Promiſe was not made to the Plaintiff in the Judgment, but to one having Authority to ſue out Execution, it is ſufficient; for it ſhall be preſumed the Debt was aſſign'd to him, ſo as he had an abſolute Power over the Execution. 1 *Lev.* 188. *Ruſſell* v. *Haddock.*

29. For other Caſes concerning Promiſes by Executors and Adminiſtrators in Conſideration of Forbearance, ſee *Moor* 685. *Caſe* 946. 1 *Roll's Ab. fol.* 24. *pl.* 32. *fol.* 25. *pl.* 34. 3 *Cro.* 70. *March* v. *Cupeper. Cro. Eliz.* 9. *Trevanion* v. *Howel.*

Secondly, Of Declarations by and againſt Executors and Adminiſtrators.

1. An Adminiſtrator in declaring muſt ſhew that Adminiſtration was granted to him, and by whom, 6 *Mod.* 135. if he ſets forth that Adminiſtration was granted to him, and does not ſay by whom, and the Defendant pleads over, that is an Admittance of the Plaintiff's being a rightful Adminiſtrator; if the Plaintiff ſhews that Adminiſtration was granted by one that had no Authority, as if he ſets forth an Adminiſtration by a peculiar Juriſdiction, when there appears to be *bona Notabilia*; that ſhall not be the ſame, as if he had ſaid that Adminiſtration was granted, and did not ſay by whom, but he can have no Judgment. 6 *Mod.* 134, 135, 136. *Adams* againſt the Tertenants of *Savage.* And the Reaſon appears to be, that where the Matter is indifferent to be well or ill, and the Party pleads over, they will intend it well.

2. If the Plaintiff ſets forth, that Adminiſtration was granted to him by a Peculiar *debito modo*, without ſaying that he had ordinary Juriſdiction, or that it did of Right belong to him to grant Adminiſtration. *Per Holt* Chief Juſtice, It cannot be ſaid to be only Form, for it is the committing Adminiſtration by one having legal Authority, that veſts the Cauſe of Action in the Plaintiff; and the Ordinary by Law is to commit Adminiſtration; and in all Caſes of Peculiars, you muſt ſhew a Title and Right to grant Adminiſtration, and the leaſt Averment that can do it, is to ſay, that *de Jure* it did belong to him to grant Adminiſtration; for the Court cannot take Notice of Peculiars, but may of Biſhops; and a *Profert in cur' Literas Adminiſtrat'* is not enough, for they only certify what is on the Face of them, *viz.* that Adminiſtration was committed to the Plaintiff by ſuch a one; but that does not import he had any Right to grant any.

But what was ſaid by Juſtice *Powel* was, *might not the Defendant come and traverſe his having Right to commit, if you had alledged it*; and in the Caſe of *Chiverton* v. *Trudgeon*, in 2 *Cro.* 556. it was doubted whether the Right of an Archdeacon, who is taken Notice of by us, as *Oculus Epiſcopi*, ought to be ſhewn; but all the Matter is, that here it is ſaid *Debito modo commiſſ' fuit*, whether that ſhall be taken only in Reſpect to the legal Form of the Inſtrument, or to the Peculiar's Right of committing; and I rather believe the Firſt, and *Debito modo* ſeems to me not to be enough to traverſe; they might indeed have traverſed the Adminiſtration committed, and given in Evidence, that he had not Right to commit Adminiſtration, and no Rule was given. 6 *Mod.* 241, 242. *Denham* v. *Stevenſon.*

3. Where the Defendant declared, that in Conſideration the Plaintiff would forbear to ſue the Defendant as Adminiſtrator of *J. S.* who died indebted to him until he married ſuch a one, that he the Defendant would pay, &c. The Objection was, that the Plaintiff had not called

the Defendant Adminſtrator, or alledged that he was, but only that in Conſideration the Plaintiff would not ſue him as Adminiſtrator, &c. but the Declaration was held ſufficient. 1 *Lev.* 222.

4. Adminiſtration was ſaid to be granted by an Official, without ſaying *cui de Jure pertinuit*; it was good after a Verdict. 4 *Mod.* 133. *Maſon* v. *Hanſon*, 1 *Show.* 355. *Comb.* 196.

5. In an Action againſt an Adminiſtrator, the Plaintiff need not aver that Adminiſtration was committed to the Defendant. *Comb.* 465.

6. Before the Act of 16, 17 *Car.* 2. *cap.* 8. the Want of a *Profert* of the Letters Teſtamentory made a Declaration by an Executor ill after a Verdict, *Cro. Eliz.* 551. *Edwards* v. *Stapleton*, but that was cured by that Statute, and by the Statute of the Amendment of the Law 'tis cured upon a Judgment by Default; but Q. if the Declaration good, if it be ſhewn Specially for Cauſe.

7. An Action was brought by the Plaintiff as Adminiſtrator, who declared upon an *Indebitatus Aſſumpſit*, and a *Quantum meruit* to the Inteſtate, and on an *Inſimul computaſſet* with the Executor; and it was held ill. 1 *Show.* 366. *Rogers* v. *Cooke.*

8. In a Declaration by a Feme Adminiſtratrix, it is not proper to ſay, that the Money was received *ad uſum ipſorum*, tho' it may be ſaid *ad dampnum ipſorum.* *Comb.* 311.

Thirdly, Of the Pleadings by Executors and Adminiſtrators.

1. Where Trover is brought by a rightful Executor or Adminiſtrator againſt an Executor *de ſon tort*, he cannot plead Payment of Debts, &c. to the Value, &c. or that he hath given the Goods, &c. in Satisfaction of the Debts, becauſe no Man ought to obtrude himſelf upon the Office of another; nevertheleſs upon the general Iſſue pleaded, ſuch Payments ſhall be recouped in Damages; as where the Diſſeiſor hath paid the chief Rent, &c. that ſhall be recouped to him in the Damages in Aſſiſe brought againſt him by the Diſſeiſee.

But in an Action by a Creditor againſt an Executor *de ſon tort*, the Defendant may plead *Plene Adminiſtravit*, and give in Evidence the Payment of juſt Debts, but he cannot retain a juſt Debt to himſelf. *Carth.* 104.

Where an Action was brought upon an *Aſſumpſit* againſt the Defendant as Executrix to *John Kent*; the Defendant pleaded in Bar three ſeveral Judgments obtained againſt her as Executrix, upon three ſeveral Bonds, at the Suit of three ſeveral Perſons; and that ſhe had Aſſets in her Hands, only to the Value of 5 *s.* liable to thoſe ſeveral Judgments.

The Plaintiff replieth ſeparately to each Judgment, *viz.* that one Half of the Money recovered on each Bond, was more than was juſtly due from the Teſtator; and the Plaintiff in each Action was willing, and had offered to accept the other Moiety of the Defendant in Diſcharge of the Whole, and upon Payment thereof to releaſe the ſeveral Judgments; and that the Defendant had ſufficient Aſſets *ultra*, thoſe Judgments were ſatisfied to pay the Plaintiff, and concludes ſeverally after pleading the Matters as aforeſaid, *viz.* that the Defendant *Judicia prædicta deceptive & ea Intentione ad defraudandum & decipiendum* the Plaintiff, had kept the ſaid Judgment on Foot.

The Defendant joined generally maintaining her Bar, that ſhe had not Aſſets *ultra*, and traverſed *quod ipſa prædicta* (the Defendant) *deceptive & ea Intentione ad defraudandum & decipiendum* the Plaintiff *de damnis ſuis prædict' de Judiciis prædict' ſeu eorum alteri exonerari ſeu relaxari diſtulit, & adhuc differt, aut Judicia prædict' ſeu eorum alterum in ſuis robore & vigore permanere adhuc permittit, ad defraudand' & decipiend'* the Plaintiff *de damnis ſuis prædict' modo & forma prout, &c.*

And upon a Demurrer to this Rejoinder it was ſhewn for Cauſe, that the Defendant ought to have rejoined ſeverally to every Judgment, and ſo as to include all three Judgments in one general Traverſe, becauſe it muſt be a great Diſadvantage to the Plaintiff to take Iſſue thereon; for if he ſhould join Iſſue upon the Fraud in all the Judgments, and if one ſhould be found not to be kept on foot by Fraud, the Iſſue would be againſt him; and on the other Hand it would be as good an Iſſue to plead generally, that *Judicia prædict' ſive eorum alterum* was continued by Fraud; and therefore it was inferred that the Defendant ought to have made ſeveral Traverſes.

Sed per Curiam, the Rejoinder is good, becauſe the Traverſe was, that all or any of the Judgments were kept on foot by Fraud; and if Iſſue had been joined, that all the Judgments were kept on foot by Fraud, and it had been found that one of them alone had been kept, *&c.* by Fraud, this Iſſue had been found for the Plaintiff, becauſe the Plea was falſe in Part, and for that Reaſon the Whole is falſe; therefore this general Form of Pleading could be no Diſadvantage to the Plaintiff, as is pretended; for he might have taken Iſſue that all were continued by Fraud, or elſe he might have ſingled out one of the Judgments, and taken Iſſue upon that alone.

The Plaintiff ſeeing the Opinion of the Court, prayed Leave to diſcontinue, which was granted. *Carthew* 195, 196. *Beake* v. *Kent*.

2. An Adminiſtrator pleaded *plene adminiſtravit*, and upon an Iſſue found for the Plaintiff, and moved in Arreſt of Judgment, that Adminiſtration was committed by the Archbiſhop of *York*, where the Inteſtate had *bona notabilia* in *London*, and that this appear'd within the Record. *Per Curiam:* If this was upon a Demurrer, they would have taken Notice of it; but now the Cauſe being tried, and a Verdict being againſt the Defendant, they would not; *ideo* Judgment *niſi. Skin.* 237. *Anonymus*.

3. An Action upon the Caſe was brought againſt the Defendant as Adminiſtrator, upon a Promiſe made by the Inteſtate. The Defendant pleaded two ſeveral Bonds in Bar, and concluded his Plea, with a general *Plene Adminiſtravit*, without confeſſing any Aſſets to be in his Hands.

The Plaintiff replied Specially, that the Defendant had Aſſets ſufficient, beſides what would ſatisfy the ſaid two Bonds; and upon a Demurrer to this Replication, it was ſaid by the Court, that the general Concluſion of the Plea in Bar hath waved the ſpecial Matter of the Bonds; therefore the Plaintiff ſhould have replied generally. *Carthew* 208. *Page* v. *Wats*, it is ſaid that no Perſon appearing for the Defendant, Judgment was given againſt him.

4. If an Executor *de ſon tort* delivers the Goods to the Adminiſtrator before an Action brought, he may plead *Plene Adminiſtravit*, if Adminiſtration be firſt granted, and then another takes the Goods, he is not thereby Executor *de ſon tort*. *Far.* 31.

5. An Action upon the Caſe was brought upon an *Aſſumpſit*, for Money received by the Defendant to the Uſe of the Plaintiffs. The Defendant pleads *quod Cauſa Actionis non accrevit infra ſex Annos*; the Plaintiff replies, that the Party died Inteſtate ſuch a Day, and that no Adminiſtration was granted till ſuch a Time, and then Adminiſtration was granted to the Wife; *Et ſic Cauſa Actionis accrevit*, and concludes to the Country. Here the Plaintiff ought not in his Replication to have concluded to the Country; for the Defendant might rejoin that the Party made a Will, or died Inteſtate; and that Adminiſtration was granted to *J. S.* for if one *A.* dies Inteſtate, and Adminiſtration is granted to *B.* and *C.* receives Money, and then Adminiſtration is granted to *D.* the ſix Years ſhall be accounted from the firſt Adminiſtration. *Curry & Ux'* v. *Stevens. Comb.* 311.

Fourthly, Of the Iſſue, Trial and Evidence.

1. Where the General Iſſue, in an Action brought againſt an Executor is drawn up, that *Non Aſſumpſit*, without ſaying, either that the Executor, or the Teſtator *Non Aſſumpſit*, it ſhall be intended by the Court, after a Verdict, that the Teſtator *Non Aſſumpſit*, as in Debt againſt Executors, where they plead *non eſt factum ſuum*, *ſuum* ſhall be intended to ſignify the Teſtator's Bond. 1 *Lev.* 184.

2. On *ne unques Executor* pleaded, the Defendant cannot give Letters of Adminiſtration in Evidence. *Comb.* 220, 221. But Letters *ad Colligendum* he may. *Ibm.*

3. If there be a Judgment againſt an Adminiſtrator by the Name of Executor, and if he be ſued afterwards as Executor for the ſame Cauſe, he may give the former Judgment in Evidence. *Comb.* 220, 221. *Harding* v. *Salkin* Executor, *&c.*

4. In an Action upon the Caſe againſt an Executor, upon *Plene Adminiſtravit* pleaded, three Points were declared *per Holt* Ch. Juſtice: *Firſt*, That the Plaintiff muſt prove his Debt, otherwiſe he ſhall recover but one Peny Damages, tho' there be Aſſets; for the Plea only admits the Debt, but not the Quantity. *Secondly*, that all ſperate Debts mentioned in the Inventory, ſhall be counted Aſſets in the Executor's Hands; for that is as much as to ſay, that they may be had for Demanding, unleſs the Demand or Refuſal be proved. *Thirdly*, that in Strictneſs no funeral Expences are allowable againſt a Creditor, except for the Coffin, Ringing the Bell, Parſon, Clerk, and Bearers Fees, but not for Pall or Ornaments. *Salk.* 296. *Shelley*'s Caſe, 5 *W.* 3.

5. So in the 7th of *W.* 3. Upon a *Plene Adminiſtravit*, *Holt* ſaid, If an Inventory be produced, where there is one Particular of good and bad Debts, the Defendants ſhall be charged with the Whole, becauſe he doth not diſtinguiſh them, unleſs he can diſcharge any Part of it by ſpecial Evidence. *Note*, here the Executor put in a ſecond Inventory, ſomewhat different from the Former, and would offer that; *ſed non allocatur*; no more than one ſhould produce his own Anſwer in Chancery, as Evidence for himſelf, but a Creditor may charge him with which Inventory he pleaſeth. And it was ruled, that the Defendant muſt not only prove Payment without Abatement or Colluſion, in Diſcharge of Bonds, but alſo that there was a real Debt, for which the Creditor's Oath ſufficeth; or if Evidence be given, that the Teſtator acknowledged ſo much due by Bond, that may be allowed, for it would have been good Evidence againſt himſelf.

Note; Sperate Debts ſhall be reckoned as Money in Pocket, becauſe it is ſuppoſed the Executor may have them when he will; here was 150 *l.* charged for the Teſtator's Funeral, out of which *Holt* ſaid at leaſt 140 *l.* ought to be deducted, for 10 *l.* is enough to be allowed for the Funeral of one in Debt.

Longuevill ſaid, that Baron *Powell* in his Circuit would allow but 11 *s.* 6 *d.* in the like Caſe, which he ſaid was all the neceſſary Charge. *Comb.* 342.

6. Plaintiff, as Executor, brought an *Indebitatus* for Monies of the Teſtator receiv'd after his Death to the Plaintiff's Uſe, and produced the Teſtator's Debtor, who paid it as a Witneſs, but he was rejected *per Holt* Chief Juſtice; for the Plaintiff by bringing this Action, determines the Election he had of ſuing the original Debtor, or the Receiver, and allows of the Payment; but the Plaintiff being Nonſuited, the Matter is at large again, and he may ſue the Debtor; and therefore the Debtor ſwears to diſcharge himſelf, and by Conſequence is no Witneſs.

It appear'd alſo that another Sum of Money mention'd in the Declaration, was found by the Defendant in the Teſtator's Room after his Death, which he took.

And *per Holt* Chief Juſtice; as to that, the Plaintiff miſtook his Action, for he ſhould have brought Trover, and not an *Indebit'* for Money received to his Uſe; and the Plaintiff was nonſuited. 6 *Mod.* 151. *Clerk* v. *Bealey*.

7. Upon an Iſſue on *Plene Adminiſtravit*, the Defendant cannot give in Evidence, a Judgment not ſatisfied, becauſe it is an Adminiſtration of another Nature than he had pleaded.

Payment of Debts *pendente brevi* is no Evidence upon this Iſſue, for the Plea is *Plene Adminiſtravit* in the *Præter-Tenſe*; and this Evidence proves an Adminiſtration only, ſince the Purchaſe of the Writ, and therefore the Defendant muſt plead it Specially. 3 *Salk.* 22.

8. In a *Scire facias* upon a Judgment againſt the Teſtator, if the Defendant pleads *Plene Adminiſtravit*, 'tis ill upon a ſpecial Demurrer, becauſe by the Plea, the Defendant admits that Goods came to his Hands, and therefore he ought to ſhew how he adminiſter'd, that it may appear it was not in paying Debts of an inferiour Nature, and this is in Favour of Judgments; but upon a general Demurrer, ſuch a Plea may be good, becauſe the Defendant might have paid other Judgments, and ſo ſhall his Plea (which is confeſs'd by the Demurrer) be intended.

Note; the proper Plea in this Caſe is *Riens inter maines*, at the Time of the Teſtator's Death. 3 *Salk.* 22.

9. Executors may to an Action upon the Caſe, plead a Bond not yet due, and the Plaintiff may reply Aſſets *ultra* that Bond. 3 *Lev.* 57.

10. If an Executor declares upon a Promiſe made to the Teſtator, and the Statute of Limitations is pleaded, he cannot give in Evidence a Promiſe to himſelf within the ſix Years. *Salk.* 28.

Fifthly and Sixthly, Of the Damages, Coſts, Judgment, and Execution.

1. If a Judgment be had againſt two, and afterwards a *Scire facias* be brought againſt the Adminiſtratrix of one of them, after two *Nihils* returned, the Party may be relieved by her *Audita Querela*, and will have Judgment that ſhe ought not to be charged alone. 4 *Mod.* 315.

2. If an Executor brings a *Scire facias* upon a Judgment recovered by the Teſtator, the Letters Teſtamentary muſt be ſhewn in the Writ. 1 *Show.* 60.

3. Where the Plaintiff declares upon an *Inſimul Computaſſet* with the Executor, of Monies due by the Teſtator, the Judgment ſhall be *de bonis propriis*. 2 *Lev.* 122. *Hawes* v. *Smith*.

4. If an Executor promiſes, in Conſideration of the Forbearance of Money due by the Teſtator upon a Bond, to pay it at ſuch a Day; now inaſmuch as notwithſtanding a Recovery upon this Promiſe, the Plaintiff may ſue the Executor upon the Bond; therefore the Damages to be given by the Jury ought not to be for the whole Money due, but only for the Non-payment at the Day. *Cro. Eliz.* 643. *Chambers* v. *Leverſage*.

5. *Moor* 419. *Caſe* 575. *Wheeler* v. *Collier*, where the Inteſtate was indebted to the Plaintiff in 17 *l.* and in Conſideration that the Plaintiff would ſend him in ſix Barrels of Beer, he would pay 20 *l.* and entire Damages were given upon a Declaration on this Promiſe, and the Judgment was arreſted by the whole Court; and it was there ſaid, that if the Plaintiff has Judgment againſt the Executor, upon a Promiſe to pay, in Conſideration of Forbearance to a certain Day, it ſhall be *de bonis Teſtatoris*. *Cro. Eliz.* 406. the ſame Caſe.

6. So where an Executor promiſes, that if he has Goods ſufficient come to his Hands, he will pay the Teſtator's Debt; if Goods come to

his Hands, and he doth not pay, he ſhall not be chargeable upon this Promiſe out of his own Goods. *Cro. Eliz.* 91. *Trewinain* v. *Howell.*

7. *Till* brought an Action on the Caſe in the Common Pleas againſt *Gale*, as Adminiſtrator of *T. S.* and there was a Verdict and Judgment againſt him; thereupon he brought a Writ of Error in *B. R.* and there the Judgment was affirmed; and now it was moved, that the Adminiſtrator might pay Coſts upon this Writ of Error, becauſe it was his own Act, and lay in his own Knowledge, and was brought *in Dilatione Executionis*, in which Caſe the Statute gives double Coſts.

But after an Adjournment on *Monday the* 27th of *November*, 1693, it was reſolved that the Adminiſtrator ſhould not pay any Coſts, for that he was not a Perſon within the Intent of the ſaid Statute. *Carthew* 281. *Gale* v. *Till.*

8. If the Plaintiff as Adminiſtrator ſues upon a Judgment obtained by the Inteſtate, and obtains a Verdict, and it appears upon the Record that the Plaintiff is not entitled to his Action, the Defendant ſhall not have Coſts upon the 8th and 9th of King *William* 3. *cap.* 3. but the Court may enter up their Judgment; that altho' a Verdict be found for the Plaintiff, yet it appears to the Court that he has no Cauſe of Action; therefore it is adjudged that he have no Benefit by his Writ, and may award no Coſts. 6 *Mod.* 137.

9. An Action of Trover was brought by the Plaintiff as Adminiſtrator of *T. S.* and in the Declaration the Plaintiff had laid the Converſion to be after the Death of the Inteſtate, and that Adminiſtration was granted to the Plaintiff. Upon Not guilty pleaded, the Plaintiff was nonſuited, and the Queſtion was, whether he ſhould pay Coſts; and it is ſaid the better Opinion was that he ſhould, becauſe the Goods came to him after the Death of the Inteſtate, and he might have Declared upon his own Poſſeſſion, and not as Adminiſtrator, which he had done on Purpoſe to ſhelter himſelf from Coſts. *Mod. Caſes in Law and Equity* 108, 109. *Cro. Car.* 219. 6 *Mod.* 94. 1 *Ven.* 109, 110.

10. An Adminiſtrator ſhall pay Coſts for not going on to Trial. *Far.* 118.

11. An Adminiſtrator ſhall not pay Coſts upon a Writ of Error, the Judgment being affirmed. 4 *Mod.* 245, 246. 1 *Mod.* 77.

12. Where the Plaintiff declared upon an *Inſimul Computaſſet* by the Defendant with the Plaintiff as Executor, and was nonſuited, it was held in the Caſe of *Bull* and *Palmer*, 2 *Lev.* 165. that he ſhould pay no Coſts. Q. if it be Law.

13. An Action upon the Caſe was brought by the Husband and Wife Executrix, declaring, that whereas the Defendant was indebted to them as Executor of *J. S.* for ſo much Money received by him to their Uſe, as Executor, he promiſed to pay it. And at the Trial the Plaintiff's were nonſuited; and the Queſtion was, whether they ſhould pay Coſts upon the Statute of 23 of *H.* 8. And Serjeant *Darnell*, who argued for the Defendant ſaid, that as this Action was brought by the Plaintiff in their own Right, and upon a Contract with themſelves, (that is) the Receipt of the Money to their Uſe, and which they ought not, at leaſt need not, Name themſelves Executors, and the Naming the Plaintiff Executor, when it is not of Neceſſity, ſhall not exempt him from paying Coſts. *Latch* 220. *Hard.* 78, 79. and for a Foundation for this Diſtinction, he relied upon the Book the 2 *H.* 7. 15. where the Difference is taken between an Action brought upon the Executor's own Poſſeſſion, and where upon the Poſſeſſion of the Teſtator; and upon this he would reconcile the Caſes in 3 *Lev.* 60, 375. 2 *Lev.* 165. If an Executor brings an Action of Trover and Converſion in the Time of the Teſtator, or upon a Trover in the Teſtator's Time, and a Converſion in the Executor's Time, he ſhall pay no Coſts; ſo upon an *Inſimul Computaſſet* with the

Executor for Money due to the Teſtator; and the Judgment of the Court was, that the Plaintiffs ſhould pay Coſts.

And my Lord Chief Juſtice's Argument not being very long, and containing ſolid Reaſoning, I beg leave to recite it: “ Says he, If the
“ Plaintiff having married the Executrix, had ordered, as he might
“ have done, *J. S.* to receive this Debt, which was due to the Teſtator,
“ and he had accordingly received it, that had been a good Payment
“ and Diſcharge of the firſt Debt, and *J. S.* would now become
“ indebted to the Plaintiff by a Contract in the Plaintiff's Time, *Viz.* by the
“ Appointment and Receipt; and he in that Caſe might bring an *Indebitatus*
“ *Aſſumpſit* againſt *J. S.* for ſo much Money received to his Uſe
“ as Executor. And here, tho' the Defendant received the Money
“ without any previous Appointment of the Plaintiff, yet the Plaintiff,
“ by bringing this Action, having aſſented to the Receipt, it amounts to
“ an Appointment, and a Diſcharge of the firſt Debtor, and makes a
“ Contract between the Defendant and him. And here the Plaintiff
“ need not have named himſelf Executor, it being upon a Contract
“ with himſelf, his ſaying that it was to his Uſe as Executor, is true, and
“ therefore no Harm, but rather better, for it ſhews how the Right came;
“ for if here he had been an Adminiſtrator inſtead of Executor, and
“ declared as ſuch and recovered, and then Adminiſtration had been revoked,
“ the Defendant would be relievable by *Audita Querela*.

“ And it is a true Rule, that where the Executor need not name
“ himſelf Executor, he ſhall pay Coſts upon a Nonſuit, and the Naming
“ himſelf Executor ſhall not exempt him from it. And where an Executor
“ recovers in a Caſe in which he need not name himſelf Executor,
“ and dies Inteſtate, or makes his Executor, who will not prove
“ the Will; as to the firſt Teſtator's Goods, his Executor or Adminiſtrator,
“ and not the Adminiſtrator *de bonis non* of the firſt Teſtator, ſhall ſue Execution,
“ and would be liable to the Coſts of a Nonſuit of him, and not the
“ Adminiſtrator *de bonis non*. And though here the Executor ſhould bring
“ the Action in his own Name, yet the Debt recovered is Aſſets in his
“ Hands. If Executor lives at *London*, and Goods which Teſtator died poſſeſſed
“ of are at *Briſtol*, yet the Executor ſhall have ſuch immediate
“ Poſſeſſion of them, that he may maintain Trover for them in his own
“ Name againſt any Converter of them, and the Damages recovered
“ ſhall be Aſſets in his Hands; but if he does not recover ſo much in
“ Damages, as really the Goods were worth, and that happens not thro'
“ any Fault of his, he ſhall anſwer for no more than he recovers;
“ as if the Goods be periſhable Goods, and before any Default in him
“ to preſerve them, or ſell them at due Value, they are impaired, he ſhall
“ not anſwer for the firſt Value, but ſhall give that Matter in Evidence,
“ to Diſcharge himſelf. But if one takes Goods out of his Poſſeſſion,
“ he muſt ſue him that took them, to have an Opportunity of diſcharging
“ himſelf of anſwering more in Aſſets than he recovers. So if Executors
“ will omit to ſell the Goods at a good Price, and after they
“ are taken from him, there the Value of the Goods ſhall be Aſſets
“ in his Hands, and not what he recovers, for there was a Default in
“ him; and in this Caſe, if the Receipt was by the Defendant after the
“ Plaintiff's Marriage with the Executrix, the Husband alone ſhould
“ have brought the Action; but if the Receipt were in the Wife's
“ Time before the Marriage, the Husband and Wife ought to join in the
“ Action. So *per tot. Cur.* Defendant muſt have Coſts. 6 *Mod.* 181. *Salk.*
“ 207. *Jenkins & Ux.* v. *Plombe*”.

13. Executor brought *Aſſumpſit* for Money of his Teſtator had and received by the Defendant, to the Uſe of the Plaintiff, as Executor, and was Nonſuit. And now the Court was moved for a Direction to the Maſter to tax Coſts. *Et per Curiam*: He ſhall not pay Coſts, for he

could not ſue but as Executor; and it is not material whether the Money was received by the Defendant ſince the Death of the Teſtator, or before; for ſuppoſe it ſince, it is not Aſſets in the Hands of the Executor till it is recovered; but in Trover and Converſion, by an Executor upon a Trover and Converſion, in the Time of the Execuor, the Executor if Nonſuit ſhall pay Coſts; for he need not name himſelf Executor, and the Goods are Aſſets in the Executor's Hands, tho' he never recover them. 1 *Ven.* 190. So if an Executor will not go on to Trial according to his Notice, he ſhall pay Coſts for that. *Salk.* 314. *Eaves* v. *Mocato.*

14. Upon being Nonſuited, the Queſtion was, whether the Plaintiff ſhould have Coſts upon the Statute of 8 *Eliz.* and held not. *Ford* v. *Rolls, Cro. Eliz.* 69.

REFERENCES

TO

PRECEDENTS on ACTIONS on the CASE.

Declarations.

For Executors and Adminiſtrators.

FOR an Executor for Goods ſold and delivered. 1 Bro. 14. Red. Dec. 40.

For an Executor upon a Promiſe for the Teſtator to deliver Oats. 1 Bro. 30. Pl. gen. 42.

For an Executor againſt an Executor of an Executor, for Money for Hay ſold, and for Depaſturing of Cattle. 1 Bro. 20.

For an Executor of an Executor againſt an Executor for Money borrowed, to be paid upon Requeſt. Ro. Ent. 64.

For an Executor for Attorny's Fees. Wi. Ent. 51. 2 Inſt. Cl. 157. Cla. Man. 86.

For an Executor againſt an Executor upon a Promiſe to pay Money in Conſideration of Forbearance. Bro. Red. 88.

For an Executor during the Minority of an Infant Executor, for Goods ſold by the Teſtator. Han. 1.

For an Executor upon an Account ſtated with the Teſtator for Goods ſold, and Money lent. Bro. Vad. Me. 30. Cl. Ma. 68. 2 Inſt. Cl. 161.

For an Executor againſt an Attorney for Money received, and Money lent. Lev. Ent. 1.

For Adminiſtrators.

By an Adminiſtrator for Goods ſold by the Inteſtate. Cl. Man. 92.

By an Adminiſtrator for Monies had and received for the Inteſtate's Uſe. 1 Bro. 11.

Upon a Promiſe for the Forbearance of a Suit. 1 Bro. 15.

For Meat, Drink, &c. found by the Inteſtate. Clift 49. 2 Inſt. Cl. 153.

The like for Work and Labour by the Inteſtate. Thomp. 10. Bro. Red. 111.

By an Adminiſtrator for Non-performance of an Award. Vid. 14.

By an Adminiſtrator for Trover for Money loſt by the Inteſtate. 2 Saund. 137.

The like for Taylor's Work done by the Inteſtate. 2 Saund. 371.

By an Adminiſtrator during the Minority of the Infant, againſt an Adminiſtrator for Goods ſold and deliver'd. 1 Bro. 17.

By an Adminiſtrator during the Minority of the Infant, againſt an Adminiſtrator, with the Will annext relating to the Plowing and Tilling of Land. Clift 51.

By an Adminiſtrator againſt an Executor, for Money received for the Inteſtate's Uſe. Vid. 45.

The like for Attornies Fees. Bro. Met. No. 9. Han. 4.

By an Adminiſtrator of Goods not Adminiſtred, either by J. or P. with the Will annex'd. 2 Saund. 371. Bro. Vad. Me. 37.

For an Adminiſtrator during the Minority of an Executor, for not performing a Promiſe made by the Defendant, upon a Sale of the Intereſt of a Term. Cl. Man. 115. Bro. Vad. 35.

For an Adminiſtrator of an Inteſtate, who was Cook of a Hall in the Univerſity of Oxford, againſt a Student, for Money laid out by the Inteſtate, a Quantum Valerent for Meat and Drink, an Inſimul Computaſſet, between the Inteſtate and the Defendant. Clift 49.

By an Adminiſtrator againſt a Student of the Univerſity of Oxford, for Meat and Drink provided by the Inteſtate. Clift 49.

By an Adminiſtrator where the Inteſtate had begun a Suit againſt the Defendant upon two Promiſes; and the Defendant, in Conſideration that the Inteſtate would forbear any further Proſecution, promiſed to pay ſo much for Expences laid out upon Demand. 1 Brown. 15.

Againſt

Againſt Executors.

Againſt an Executor, upon a Promiſe made by the Teſtator, relating to Goods ſold to a Stranger by his Direction. Rob. Ent. 27.

Againſt an Executor, upon a Promiſe of the Teſtator of the Enjoyment of Lands. Thom. 14.

Againſt an Executor for Meat and Drink provided for the Teſtator. Thom. 21. Cl. M. 89.

The like for Goods ſold to the Teſtator. Han. 60.

The like for Service. 1 Saund. 264.

The like for Money lent. Bro. 28, 31.

Againſt an Executor, upon a Promiſe made by the Teſtator to ſave the Plaintiff harmleſs. Bro. Vad. Me. 32. 2 Inſt. Cl. 131.

Againſt five Executors Brothers and Siſters of the Teſtator, and one other who was outlawed. Bro. Vad. Me. 34.

Againſt an Executor for Money received for the Plaintiff's Uſe. Re. Dec. 39.

Againſt an Executor where a Co-Executor was Dead, for Money lent to the Teſtator. Cl. Aſſ. 188.

Againſt an Executor by an Executor, upon a Promiſe of Forbearance. Bro. Red. 88.

Againſt an Executor upon a Promiſe relating to Marriage. 1 Bro. 71. Han. 10, 42. Clift 54. 1 Bro. 42.

The like for curing Diſeaſes. Bro. Red. 35.

Againſt an Executor upon a Promiſe of Forbearance. 1 Bro. 45. Cl. Man. 82. 2 Inſt. Cl. 164. 1 Bro. 65.

Againſt an Executor by a Legatee upon an Agreement made by the Executor and the Legatee, relating to the Payment of the Plaintiff's Legacy. Thompſon 73.

Againſt an Executor upon a Promiſe of the Teſtator, that in Conſideration that the Plaintiff would marry his Nephew, the Teſtator would give the Plaintiff all his Goods at his Death, except 100l. which he would give his Wife, with an Averment, that his Goods, beſides his Debts, and the 100l. to be given to his Wife, amounted to 380l. Wi. Ent. 281.

Againſt an Executor upon a Promiſe made by the Teſtator, that in Conſideration the Plaintiff would marry M. the Teſtator promiſed to pay the Plaintiff 30l. 1 Bro. 71. Clift 54.

Againſt an Executor where the Teſtator was indebted to the Plaintiff, and the Defendant having Goods ſufficient to pay the Plaintiff. In Conſideration that the Plaintiff would give him a further Day of Payment, he promiſed to pay. 1 Bro. 45.

The like of a Marriage Portion. 1 Bro. 65.

Againſt Adminiſtrators.

Againſt an Adminiſtrator for curing Diſeaſes, and Work done for the Inteſtate. Han. 59.

The like for the Forbearance of a Suit. Han. 36.

The like for Goods ſold to the Inteſtate. Han. 45.

The like upon ſeveral Promiſes. 2 Mod. Int. 73.

Againſt an Adminiſtrator during the Minority of an Executor upon two Promiſes, one on a ſtated Account, and the other a ſpecial Promiſe of a Legacy. 2 Bro. 27.

The like for Money had and receiv'd by the Inteſtate. 1 Bro. 72.

Againſt an Adminiſtrator during the Minority of an Executor, where the Teſtator gave the Plaintiff and his Siſters all his Eſtate; and upon a Diſcourſe, the Plaintiff required Payment out of the Inteſtate's Effects; and the Defendant, in Conſideration of giving a Day, promiſed to pay, &c. 2 Bro. 27.

Againſt an Adminiſtrator, where the Inteſtate was indebted to the Plaintiff upon a Bond, and intended therefore to ſue out Adminiſtration; the Defendant, in Conſideration that the Plaintiff would not hinder the Defendant of Letters of Adminiſtration, and would not ſue the Defendant for that Debt, he promiſed that the Plaintiff ſhould not loſe one Peny of his Debt. 1 Brow. 34.

Where the Inteſtate was indebted to the Plaintiff upon a Bond, and the Plaintiff intended to ſue the Defendant for that Debt, in Conſideration that the Plaintiff would forbear the Suit, and would give the Defendant Time for the Payment, he promiſed to pay, &c. 1 Bro. 56. Han. 36.

Againſt an Adminiſtrator where the Teſtator was indebted to the Plaintiff for Money had and received; and the Plaintiff in Order to obtain that Debt, had ſued out a Latitat againſt the Defendant, and given him Notice of it, who in Conſideration that the Plaintiff would not arreſt him, and would ceaſe from any further Proſecution, promiſed to pay the Coſts of Suit. 1 Bro. 72.

Againſt an Adminiſtrator during the Minority of an Infant.

By

By Husband and Wife.

For Husband and Wife Adminiſtratrix of A. for Goods ſold by the Inteſtate. Thom. 71.

The like for Goods ſold after Coverture by the Adminiſtratrix. Bro. Vad. Me. 27.

For Husband and Wife Adminiſtratrix for 20 l. due to the Inteſtate upon a Promiſe made to the Adminiſtrator after Coverture. Bro. 68. Cl. Man. 54.

For Husband and Wife for Money lent the Defendant by the Wife, while ſhe was Sole. Re. Dec. 107.

Againſt Husband and Wife.

Againſt an Adminiſtratrix and her Husband, upon a Promiſe made by the Woman when Sole. Rob. Ent. 105. Vid. 95.

Againſt Husband and Wife for Goods ſold to the Wife whilſt Sole. 2 Bro. 28. Clift 87.

Againſt Husband and Wife, in Conſideration that the Plaintiff would receive into his Houſe his Wife when Sole, and would find her Meat, Drink and Lodging, that ſhe would pay as much as it was worth. Bro. Red. 29.

Againſt Husband and Wife Executrix, for Money paid by the Plaintiff for the Teſtator. Bro. Vad. Me. 38.

By a ſurviving Partner.

Vide Title, For Goods ſold and deliver'd, &c. and Bills of Exchange.

By a ſurviving Merchant.

Vide Title, For Goods ſold and deliver'd, &c.

By the Uſher of the Black-Rod.

Vide Title, For Fees.

Declarations in Actions upon Promiſes implied.

For Money Lent

To be paid upon Requeſt. 1 Bro. 12, 71. Mo. Int. 10, 12. Ven. 254. Bro. Vad. Me. 1, 2. Cl. Man. 95.

To be paid at ſuch a Feaſt. Pl. Gen. 45.

For Money received and borrowed of the Plaintiff; and in Conſideration thereof the Defendant promiſed to pay the ſame to the Plaintiff, or to his Order, upon Demand, with Intereſt. Bro. Met. Nov. 31.

For Money had and received to the Plaintiff's Uſe.

For Money receiv'd to the Uſe of the Plaintiff. Mo. Int. 6, 11. Bro. Red. 11. 2 Saund. 117, 208.

Where the Defendant promiſed to pay 1218 Guilders to the Value of 121 l. for ſo much Money before that Time had and received to the Plaintiff's Uſe. Bro. Red. 80.

The like of 450 Guineas. Clift 81.

For Money laid out and expended.

In Conſideration the Plaintiff had paid 20 l. to the Defendant, the Defendant promiſed to pay the ſame to one S. to the Uſe of the Plaintiff. 1 Bro. 11. 2 Ven. 254.

In Conſideration the Plaintiff had bought Coals for the Uſe of the Defendant, the Defendant promiſed to repay the Plaintiff ſo much as he paid for the ſame. Bro. Red. 85.

Where there was a Diſcourſe between the Plaintiff and Defendant concerning a Demiſe of Lands, and repairing them; and in Conſideration that the Plaintiff would rent the Tenements, and repair them at his own Expences, they being then in Decay, the Defendant undertook to pay ſo much Money upon Demand, as the Plaintiff ſhould lay out about the Repairs. 1 Bro. 12.

Where the Plaintiff, at the ſpecial Inſtance and Requeſt of the Defendant, had paid him 50 l. in Conſideration thereof, the Defendant promiſed to pay the Money to W. to the Uſe of L. the like Promiſe for 70 l. and another for 100 l. 1 Brown. 5.

In Conſideration the Plaintiff had bought for the Defendant 4 Tun of Pewter, and had ſhipped, and conſigned it to Parts beyond Sea, to the Uſe of the Defendant, he promiſed to pay, &c. Bro. Red. 78.

For Work and Labour.

For Taylor's Work, and for Neceſſaries found and provided for the ſame. 1 Bro. 71. Tho. 12. Han. 52. with an Account ſtated added. Han. 2, 10.

For Work and Labour in a Glaſs-Houſe. Cl. Man. 68.

For Smith's Work. Cl. Man. 100.

For Printer's Work. Re. Dec. 58.

For Work and Labour in making Spraywood. Clift 85.

For weaving Periwigs. Cl. Man. 83.

A Quantum Meruit for Buying and Carrying ſeveral Goods and Merchandizes. Clift 906, 509.

For Work and Labour in Corking a Ship. Clift 910.

In Conſideration the Plaintiff would find Workmen to cut Wood, and bind it into Bundles, the Defendant promiſed to pay the Money laid out, and for the Workmens Wages, and a Quantum Meruit for the ſame. Han. 18.

An Indebitatus Aſſumpſit for Plaiſterer's Work, and for the Materials. Mo. Int. 3.

The like for Bricklayer's Work. 2 Mo. Int. 37.

The like for Repairing and Building Houſes. Re. Dec. 20. 2 Mo. Int. 38.

For Goods and Merchandizes, and other Things ſold and deliver'd, or to be deliver'd.

That in Conſideration the Plaintiff had ſold ſix Buſhels of Peas, the Defendant would pay ſo much as the beſt Peas ſhould be ſold for, at the next Market upon Requeſt. 1 Bro. 28.

In Conſideration the Plaintiff had permitted the Defendant to carry away ſo many Bricks and Tiles as he pleas'd, the Defendant promiſed to pay for the ſame, ſo much as Bricks and Tiles were ſold for in that Country on Requeſt. 1 Brown. 28.

Upon Sale of a Gelding where Part was paid, and a Promiſe for the reſt at ſuch a Feaſt. 1 Brown. 29.

For the Sale of Coles ſold and deliver'd at the Rate of 40 s. per Load. Han. 56. The like for Goods ſold and deliver'd. 2 Inſt. Cl. 123.

That the Plaintiff being poſſeſſed of Lands on the Demiſe of the Defendant for three Years to come: That the Defendant in Conſideration of 12 d. paid by the Plaintiff, undertook to pay to the Plaintiff 10 l. upon Demand; and if the Defendant did not turn the Plaintiff out of Poſſeſſion by a Suit in Law, and ſhould not Cauſe a Demiſe which he had formerly made to be render'd void before the End of the Term. Bro. Red. 117.

In Conſideration the Plaintiff had ſold the Defendant two Oxen for which he promiſed to pay 10 l. upon Demand. 1 Brown. 40. Bro. Vad. Me. 3.

Againſt Huſband and Wife, in Conſideration the Plaintiff had ſold the Defendant's Wife before her Marriage divers Merchandizes for 29 l. which ſhe promiſed to pay upon Demand. 2 Brown. 28. The like Clift 87.

In Conſideration that the Plaintiff would ſell the Defendant the Graſs growing upon the Paſture for 5 l. Defendant promiſed to pay the Money upon Requeſt. Tho. 12. The like Clift 61. and ſo much to Plaintiff laid out for Mowing, &c.

For Turnips growing and ſold. Clift 64.

For Hemp and Graſs growing and ſold. Clift.

For Shoes ſold. Id. 85.

In Conſideration that the Plaintiff would ſell the Defendant 18 Buſhels of Barley, at the Rate of 2 s. 6 d. per Buſhel, the Defendant promiſed to pay the Plaintiff upon Demand. Tho. 18.

The like for Barley Ship'd on Board a Ship, and to pay for ſuch Work and Labour. Clift 909.

Aſſumpſit for Money upon Promiſes, in Exchange for Goods of the Plaintiff with Goods of the Defendant, and reciprocal Promiſes between the Parties, upon which the Plaintiff hath performed, and the Defendant not. Vid. 53. Clift 71, 72.

The like for Money on a Promiſe, in Exchange of the Plaintiff's Mare for the Defendant's Horſe. Ro. Ent. 63. The like of a Gelding for a Gelding, and 40 Buſhels af Oats. Clift 73.

The like of a Mare and 40 Buſhels of Coals. Id. 90.

Indebit' Aſſump' for 40 l. for Butcher's Meat ſold. Han. 60. Cl. Man. 91.

In Conſideration that the Plaintiff would ſell the Defendant Cattle at ſeveral Prizes, the Defendant promiſed to pay upon Demand, whereof Part was paid. Bro. Red. 23. Cl. Man. 92. 2 Inſt. Cl. 120, 122.

For Sheep ſold, and depaſturing. Id. 65.

In Conſideration that the Plaintiff would ſell the Defendant 10 Sheep for 4 l. the Defendant would pay at ſuch a Day. Mo. Int. 9. The like 2 Inſt. Cl. 124.

For Bread ſold and delivered. Cl. Man. 95. The like for Lead. Cl. Man. 91.

In Conſideration that the Plaintiff would ſell 10 Yards of Frize, &c. that he would pay the Value of them. Cl. Man. 101. 2 Inſt. Cl. 144.

For Malt at the Rate and Price of 2 s. 4 d. per Strike. 2 Inſt. Cl. 144. Cl. Man. 102.

For as much as Cloths ſold, called Devonſhire Kerſeys were worth. Cl. Man. 103.

The like for Tobacco and Pipes upon a ſpecial Colloquium. Cl. Man. 104.

An Aſſumpſit to pay the Plaintiff for Spaniſh Cloath ſold by him to J. S. if he made Default in Payment of the ſame. Cl. Man. 112.

By a ſpecial Original in the King's Bench, where the Defendant, in Conſideration that the Plaintiff had ſold and deliver'd him a Mare for 5 l. promiſed to pay the ſaid Sum to the Plaintiff. Cl. Man. 122.

For Firewood bought to be paid at a Day to come. Re. Dec. 42.

For Stocks of Root-wood ſold to the Defendant. Re. Dec. 66.

For Beer ſold by a Brewer. Cl. Aſſ. 184.

Where the Defendant promiſed to pay, at ſuch a Feaſt, the Remainder of Money due for Lambs ſold. Cl. Aſſ. 230.

By a ſurviving Partner for an Horſe ſold and deliver'd, and a Quantum valebat for the ſame. 2 Mo. Int. 77. 2 Saund. 122.

By a ſurviving Merchant on an Indebitatus Aſſumpſit, for Money lent, and for Goods ſold and delivered. 2 Mod. Int. 79.

Upon an Aſſumpſit for a Ship ſold and deliver'd, and another Aſſumpſit for Money had and receiv'd. Bro. Red. 74.

An Indebitatus Aſſumpſit for Money ſold and aſſign'd in the Orphans Fund. Clift 57.

By an Aſſignee of a Bankrupt for Goods ſold to the Defendant by the Bankrupt. Cl. Aſſ. 282. Clift 75.

For Medicines ſold and deliver'd. Cl. Man. 94.

In Conſideration that the Plaintiff had ſold the Defendant 58 Packs of Wool, the Defendant promiſed to pay 16 d. per Pound, or according to the beſt Price, in the Month of October next following. Clift 58.

For a Gold Ring with ſeven precious Stones ſet therein, ſold for 60 l. to be paid at the Birth of the Defendant's firſt Child. Bro. Vad. Me. 4. The like for a Mare. Clift 62.

That the Plaintiff ſold to D. 4 Oxen for 30 l. to be paid upon the Delivery, and Part thereof paid; the Defendant in Conſideration the Plaintiff had delivered to the ſaid D. the Oxen, promiſed to pay the Plaintiff. Ro. Ent. 8.

An Indebitatus Aſſumpſit for divers Wares and Merchandizes ſold and deliver'd. Cl. Man. 80. Re. Dec. 56, 61.

In Conſideration that the Plaintiff had ſold the Defendant 9 Weighs of Cheeſe at ſuch a Price, the Defendant promiſed to pay for the ſame at ſuch a Feaſt. Pl. Gen. 21.

That the Plaintiff ſold the Defendant 50 Pieces of Cloth containing 2721 Ells at the Rate of 2 s. 6 d. for every Ell, amounting to 351 l. which the Defendant promiſed to pay within two Months after the Delivery; and upon the Delivery thereof promiſed to procure A. to be bound for the Payment of the Money at the ſame Time. Vid. 97. Ro. Ent. 110.

Other ſpecial Promiſes for Payment of Money.

To pay ſo much Money if the Plaintiff ſhould prove N. to be a Confederate with Robbers. Re. Dec. 29.

To pay 2 s. for every Day the Defendant ſhould keep two Geldings of the Plaintiff's beyond ten Days. Cl. Man. 71.

In Conſideration that the Plaintiff would permit the Defendant to carry Wood out of the Plaintiff's Cloſe, the Defendant promiſed to pay the Plaintiff ſo much Money, as the Plaintiff ſhould ſuſtain Damage by carrying the Wood. 1 Brown. 36.

In Conſideration that the Plaintiff would wave his Part of the Goods, which deſcended to him from his Father for his Part, the Defendant promiſed to pay the Plaintiff 30 l. Ro. Ent. 32.

In Conſideration that the Plaintiff would pay to the Defendant all Sums of Money which the Defendant, as his Attorney, ſhould lay out in Proſecuting W. at the Plaintiff's Suit upon a Bond, and the Defendant's Fees, the Defendant undertook, that if he ſhould not recover the Money due, to pay the Plaintiff out of his own Monies. Ro. Ent. 35.

Where the Plaintiff had impounded Cattle Damage-fezant, and at the Defendant's Requeſt had deliver'd them again. In Conſideration thereof the Defendant undertook, that if the Cattle were not brought back to the Pound (to be from thence diſcharg'd by Law) to pay the Plaintiff 100 s. Ro. Ent. 102.

In Conſideration the Plaintiff being an Innkeeper would permit the Defendant to be Tapſter in the Inn; the Defendant undertook to pay the Plaintiff 20 s. for every Hogſhead upon Demand, after it ſhould be ſold. 1 Brown. 58.

That one S. was indebted to the Plaintiff in a Sum not exceeding 12 l. and that the Defendant (as he alledged) was indebted to S. in 12 l. In Conſideration that the Plaintiff would procure an Order under the Hand of S. for the Payment of the Money which the Defendant owed S. or any Part thereof, the Defendant promiſed to pay; another Promiſe, that in Conſideration the Plaintiff had procured an Order from one S. directed to the Defendant, and thereby required the Defendant upon Sight thereof to pay the Plaintiff 5 l. and place it to the Account of S. the Defendant promiſed to pay, &c. 2 Ven. 69.

That J. had pawned a Cup to the Plaintiff for 60 l. and in Conſideration that the Plaintiff would deliver the Cup to the Defendant, the Defendant promiſed to pay, &c. 1 Brown. 54.

The Defendant being inliſted for a Soldier to go beyond Sea, in Conſideration the Plaintiff would procure his Diſcharge, the Defendant promiſed to pay the Plaintiff 8 l. 1 Brown. 10.

In Conſideration the Plaintiff being a Baker, would give the Defendant, a Miller, double Toll for grinding his Corn; the Defendant had undertaken to carry the Plaintiff's Corn from any Market-Town to the Mill, within 14 Miles from thence: And in Conſideration the Plaintiff would releaſe the Defendant from the Promiſe, and carry the Corn himſelf to the Mill, the Defendant promiſed to pay the Plaintiff ten Pounds. 1 Brown. 81.

The Plaintiff at the Requeſt of the Defendant had endeavour'd for the King's Pardon for the Defendant committed for Murder; and the Defendant afterwards, in Conſideration thereof, promiſed to pay the Plaintiff 100 l.

Where the Plaintiff by his Induſtry had obtained the King's Pardon for the Defendant's Son, and one S. indicted for Felony, and had laid out 42 l. therein. In Conſideration thereof, the Defendant promiſed, that if J. S. would not pay the ſaid 42 l. within a Year, that he would pay the ſame Bro. Red. 28.

In Conſideration that the Plaintiff would go to the Maſter of the Rolls, and ſhew an Authority, which the Plaintiff had for vacating a Recognizance in Chancery, the Defendant promiſed to pay the Plaintiff 5 l. or give him a Gelding before ſuch a Time. Ro. Ent. 51.

In Conſideration that the Plaintiff would obtain for the Defendant the Office of the Queen's Gun-maker, the Defendant promiſed to pay the Plaintiff 20 l. Ro. Ent. 74, 101.

In Conſideration that the Plaintiff would procure the Defendant to be Tenant of an Inn, the Defendant promiſed to pay the Plaintiff 5 l. Ro. Ent. 69.

The Defendant had publiſhed a felonious Taking of ſeveral Goods; and in Conſideration that the Plaintiff, or any Perſon would give Notice of the Goods, ſo as they might be reſtored, the Defendant promiſed to pay 20 l. to ſuch Perſon, who ſhould give ſuch Notice. Bro. Met. 6.

Declarations upon Promiſes to deliver ſomewhat to the Defendant.

In Conſideration that the Plaintiff would pay the Defendant Money due to him upon a Bond, the Defendant promiſed to deliver up to the Plaintiff the Bond to be cancelled. 1 Brown. 29.

That the Defendant had ſold to the Plaintiff fifty Combs of Barley for 20 l. the Defendant in Conſideration of 6 d. paid in Hand, and 20 l. at the Delivery of the Barley, undertook to deliver the Barley at the Plaintiff's Houſe, before ſuch a Feaſt. 1 Brown. 67. Tho. 18. Clift 96, 97. Hern 123.

In Conſideration that the Plaintiff had undertaken to pay the Defendant 8 l. upon Demand, the Defendant promiſed to deliver to the Plaintiff 40 Dozen of Candles upon Demand. 1 Brown. 67. The like for Tallow not delivered. Clift 91.

The like for Sheep-Skins. Clift 93.

The like for Cubit Wood. Clift 26.

The like for Wine ſold, and not delivered. Clift 938.

In Conſideration of a Gelding delivered to the Defendant, he promiſed to re-deliver it to the Plaintiff at ſuch a Time, or pay for the ſame. Pl. Gen. 43. Cl. Man. 77. Re. Dec. 14. Clift 64.

In Conſideration that the Defendant had lent the Plaintiff a Saddle, he promiſed to re-deliver it. Clift 90.

The like for Sacks lent to the Defendant. Cl. Man. 110.

For not delivering Hops according to the Defendant's Bargain. Bro. Vad. Me. 11. Clift 92, 94. The like for Hempſeed. Clift 94.

The like for Hay. 2 Inſt. Cl. 125.

The like for a Horſe. 9 Mod. Int. 33.

The like for Wheat. Clift. 96.

The like for Barley. Clift 97, 99.

The like for Bricks, Clift 99.

The like for Trees. Ibid.

That the Plaintiff had deliver'd to the Defendant Goods as a Pledge for Money borrowed, which the Defendant upon tendering the Money, refuſed to re-deliver. Bro. Red. 69. Bro. Vad. Me. 10.

In Conſideration that the Plaintiff would execute a Bond to the Defendant, for the Payment of 60 l. at ſuch a Feaſt, the Defendant promiſed the Plaintiff ſuch Goods. Pl. Gen. 60.

For an Executor in Conſideration of 66 s. and 8 d. paid the Defendant by the Teſtator, the Defendant promiſed to deliver ten Quarter of Oats at ſuch a Day. 1 Brown. 50.

That the Plaintiff delivered to the Defendant a Gold Chain to keep ſafely, in Conſideration thereof, the Defendant promiſed to deliver the Chain, or pay 30 l. at Eaſter then next. Bro. Vad. Me. 6. 3 Brownl. 106. Raſt. Ent. 8.

That the Defendant was indebted to the Plaintiff in 20 l. for the Rent of a Farm, for which the Plaintiff had diſtrained ſeven Geldings; whereupon the Defendant, in Conſideration that the Plaintiff would releaſe the ſeven Geldings, promiſed to re-deliver the Geldings, or pay the ſaid 20 l. Re. Dec. 73.

In Conſideration that the Plaintiff had deliver'd the Defendant a Horſe by way of Exchange, the Defendant promiſed to pay 10s. and deliver him a Colt to ſuch a Value. Cl. Aſſ. 199.

Where the Defendant promiſed to deliver Money to one J. J. which the Plaintiff had deliver'd to the Defendant. Cl. Aſſ. 209.

For that the Defendant had withheld, and not deliver'd to the Plaintiff Evidences deliver'd to him to keep. Cl. Aſſ. 212.

For not re-delivering Money delivered to the Defendant's Wife. Cl. Aſſ. 273.

That the Defendant in Conſideration of a Price agreed upon, promiſed to deliver the Plaintiff all the Fowls which the Defendant ſhould buy after that Time, and before Shrove-tide. Clift 89. The like for 80 Pound of Stone-prunes. Clift 89.

Againſt the Maſter of a Ship, who had not delivered Part of the Goods put on Board according to a Bill of Loading. Aſh. 50.

Where a Diſcourſe was had between the Plaintiff and Defendant, for lending the Defendant Money upon a Mortgage; and the Defendant in Conſideration that the Plaintiff would deliver to C. ſuch Goods, the Plaintiff promiſed to accept the ſame in Part of Payment, or deliver them back again. Ra. Ent. 3.

Upon Promiſes relating to the Giving a Day of Payment.

Where the Lord of a Manor had impoſed a Fine of 20l. for admittance, in Conſideration that the Plaintiff would give the Defendant Time till the next Court, he promiſed to pay, &c 1 Brown. 9.

Where the Defendant was indebted to the Plaintiff in 56l. for Money receiv'd by the Defendant to the Plaintiff's Uſe, in Conſideration he would forbear till ſuch a Day, the Defendant promiſed to pay, &c. 1 Brown. 75.

The like where the Money was laid out by the Plaintiff for the Defendant. 1 Brown. 75. Ro. Ent. 100.

The like where the Defendant was indebted for Goods ſold and deliver'd. Ro. Ent. 101.

The like where the Plaintiff's Grandfather had given him a Legacy, which was to continue in the Defendant's Hands till he came of Age, and he to pay the Plaintiff Intereſt in the mean Time; and when he came of Age, in Conſideration of giving a Day of Payment, the Defendant promiſed to pay, &c. Bro. Red. 15.

Vide Title Executors.

The like Adminiſtrators.

Againſt an Huſband and Wife Adminiſtratrix, where the Inteſtate was bound to the Plaintiff upon a Bond, and the Plaintiff in order to recover the Debt, intended to put the Bond in Suit, whereof the Wife while Sole had Notice; and in Conſideration thereof, and that the Plaintiff would forbear the Suit, ſhe promiſed to pay the Coſts immediately, and the Debt within a reaſonable Time. Vid. Rob. Ent. 105.

Where T. gave ſeveral Legacies to the Plaintiff's Children, who intended to ſue the Plaintiff for the ſame as Executor, whereof the Defendant had Notice; and the Defendant in Conſideration that the Plaintiff undertook to procure his Children to forbear ſuing him till ſuch a Feaſt, promiſed to pay the Plaintiff to the Uſe of his Children, the ſeveral Legacies at that Feaſt. 1 Brown. 71.

Upon Promiſes relating to Forbearance of Suits.

Where the Plaintiff had let the Defendant a Horſe to ride a Journey, and the Plaintiff had ſued him for miſuſing his Horſe; in Conſideration that the Plaintiff would write to his Attorney to deſiſt in the Suit, the Defendant promiſed to pay the Plaintiff 10l. and to pay the Attorney's Bill. 1 Brown. 20.

In Conſideration that the Plaintiff being the Maſter of the Court of Wards, and the Defendant having a Suit againſt him, then depending in that Court, would get the Suit diſmiſſed, the Defendant promiſed to ſecure 40l. a Year upon the Plaintiff, during the Life of the Defendant's Wife, and pay him 100l. upon the Diſmiſſion. 1 Brown. 51.

Where the Defendant was indebted to the Plaintiff in 10l. and the Plaintiff intended to ſue for the ſame; in Conſideration that the Plaintiff would not proſecute the Suit, the Defendant promiſed to pay the Plaintiff the 4th Part of the Debt, and to become bound for the Reſidue. 1 Brown. 52.

Where the Defendant, who was Adminiſtratrix to her Huſband, who was indebted to the Plaintiff in 40s. and the Plaintiff had paid Money due upon a Bond wherein the Defendant's Huſband was bound with him, whereof the Denfendant had Notice; in Conſideration that the Plaintiff would not proſecute the Defendant as Adminiſtratrix, &c. but would ſtay two Months, the Defendant promiſed to pay, &c. 1 Brown. 53.

Where there was a Controverſy between the Plaintiff and Defendant in the Spiritual Court, about Repairs of a Chancel, wherein Sentence had been pronounced for the Defendant againſt the Plaintiff; and he intending to appeal to the Court of Arches, in Conſideration that the Plaintiff would not proſecute the Appeal, the Defendant promiſed to pay the Plaintiff 40 s. 2 Brown. 4.

Where the Defendant was indebted to the Plaintiff in 100 l. and he intended to ſue the Defendant for the ſame, and had given him ſuch Notice; in Conſideration that the Plaintiff would not ſue him till his Return from G. the Defendant promiſed to pay, &c. Tho. 24.

Where the Defendant, in Conſideration the Plaintiff would cauſe a Trial at the Aſſizes to be ſtopp'd, and would not any further proceed, the Defendant promiſed to pay, &c. 6 l. for the Coſts of the Suit in a Fortnight. Han. 51.

Upon Promiſes of Forbearance of a Suit againſt a third Perſon.

Where the Plaintiff had recovered a Judgment in the Common Pleas againſt R. and W. upon an Agreement, and intended to ſue them upon that Judgment; the Defendant in Conſideration that the Plaintiff would not proſecute them any further, promiſed to pay the Plaintiff the Debt at ſuch a Day, and the Coſts at another Day. Han. 33.

In Conſideration that the Plaintiff would not proſecute a Suit againſt the Defendant's Son, the Defendant promiſed to pay the Debt. Pl. Gen. 54.

In Conſideration that the Plaintiff would deſiſt from proſecuting the Defendant's Brother for 12 l. Reſidue of a greater Sum, the Defendant promiſed to pay, &c. Re. Dec. 43.

The like for the Debt of a Stranger. Ibm. 45.

In Conſideration of withdrawing a Suit in the Court of Admiralty againſt G. J. and L. G. being the Defendant's Creditors, he promiſed to pay the Plaintiff. Cl. Aſſ. 89.

In Conſideration that the Plaintiff let one T. S. out of Priſon, where he was detained at the Plaintiff's Suit, the Defendant promiſed to pay, &c. Bro. Red. 87. Cl. Aſſ. 265.

Where the Defendant, in Conſideration that the Plaintiff would forbear a Suit in an Ejectment, promiſed to deliver Poſſeſſion within a Month, and pay the Arrears of Rent. Re. Dec. 16.

In Conſideration that the Plaintiff would diſcharge the Defendant out of Priſon, who was there at the Suit of the Plaintiff, the Defendant promiſed to pay, &c. Cl. Aſſ. 265.

In Conſideration that the Plaintiff would not proſecute the Defendant in an Action of Treſpaſs, the Defendant promiſed to pay, &c. Cl. Man. 124.

Againſt Husband and Wife, where the Wife, while ſhe was Sole, was indebted to the Plaintiff in 35 l. for the Recovery whereof the Plaintiff intended to proſecute the Defendant; and the Defendant in Conſideration that the Plaintiff would not proſecute his intended Suit, promiſed to pay 5 l. per Annum till 35 l. was fully paid. Mo. Int. 24.

Special Promiſes for the Payment of Money for a third Perſon.

In Conſideration that the Plaintiff being the Lord of a Manor, would admit E. Tenant of Cuſtomary Lands held of his Mannor, the Defendant promiſed to pay 25 l. for the Fine aſſeſs'd, for the Admiſſion, at ſuch a Day. Ro. Ent. 25.

That R. the Defendant's Son was indebted to the Plaintiff in 300 l. and the Plaintiff had paid for R. 20 l. Part of a Debt due upon a Bond, wherein the Plaintiff was bound for R. upon a Diſcourſe had between the Plaintiff and the Defendant; in Conſideration that the Plaintiff would ſhew the Defendant the ſaid Bond, the Defendant undertook to pay ſuch Monies upon Demand, as R. then owed the Plaintiff. 1 Bro. 13.

In Conſideration that the Plaintiff would lend J. and A. 20 l. for ſix Months, the Defendant promiſed to pay the ſame with Intereſt upon Demand after the End of the ſix Months, if J. and A. did not. 1 Bro. 31.

In Conſideration that the Plaintiff had ſold to E. the Defendant's Daughter divers Goods, Wares, &c. and had laid out Monies for the ſaid E. in the Whole amounting to 7 l. the Defendant promiſed to pay the ſame upon Demand. 1 Bro. 47.

The like Promiſe for Cloths ſold to the Defendant's Son at his Requeſt. Mo. Int. 22.

Promiſes relating to Meat and Drink provided for a third Perſon.

That in Conſideration that the Plaintiff would provide Meat, Drink, Lodging and Firing for ſuch Perſons as the Defendant ſhould bring, the Defendant promiſed to pay ſo much for Meat and Drink, ſo much for Lodging, and ſo much for Fire. 3 Brownl. 4.

In Conſideration that if the Plaintiff would receive in his Houſe the Defendant's Son, and would inſtruct him in Muſick, and find him in other Neceſſaries, the Defendant promiſed to pay the Plaintiff for the Keeping and Schooling of his Son, and for Neceſſaries. Hern 166.

The like for a Daughter. Rob. Ent. 13.

In Conſideration that the Plaintiff would permit one J. to be a Boarder till ſuch a Time, the Defendant promiſed to pay the Plaintiff 8 l. and a Quantum Meruit for the ſame. 1 Brown. 68.

In Conſideration that the Plaintiff would procure the Defendant's Baſtard to be dieted and nurſed, the Defendant promiſed to pay ſo much as it was worth; and another Promiſe, in Conſideration that the Plaintiff had procured the Defendant's Baſtard to be nurſed for the Space of 112 Weeks, at the Rate of 2 s. per Week, amounting to 11 l. 4 s. the Defendant promiſed to pay &c. 1 Brown. 82.

In Conſideration that the Plaintiff as Tutor in a College, had undertaken the Care and Tuition of the Defendant's Son, and laid out for him 91 l. that the Defendant promiſed to pay the Plaintiff the Money laid out, and for the Tuition as much as it is worth. Vid. 12 Hern 233.

Promiſes relating to Meat and Drink, and other Neceſſaries provided for the Defendant himſelf.

In Conſideration that the Plaintiff would provide for the Defendant, who was then Sheriff of the County of G. Meat, Drink, Wine, and other Neceſſaries, for the Time of the Aſſizes, the Defendant promiſed to pay ſo much Money for the ſame, as one W. had paid, when he was Sheriff Han. 49.

The Plaintiff being the Keeper of the County Gaol of G. the Defendant being a Priſoner there, in Conſideration that the Plaintiff would provide the Defendant ſufficient Meat, Drink and Lodging, the Defendant promiſed to pay as much as it was worth. 1 Brown. 10.

The like by the Keeper of the Gate-houſe upon a Promiſe to pay 21 s. a Week, to wit, 12 d. for Dinner, 12 d. for Supper, and 12 d. for a Bed every Night. Bro. Red. 30. 1 Brown. 219.

Upon an Indebitatus Aſſumpſit, for a Hogſhead of White-Wine, and another Indebitatus for Meat and Drink for the Defendant, and Provender for his Horſe, and a Quantum Meruit for the ſame, and an Inſimul Computaſſet. 2 Vent. 279. Cl. Man. 62, 95.

For Meat, Drink and Lodging for the Defendant and his Friends. Re. Decl. 38.

Upon ſeveral Aſſumpſits for Victuals. Rob. Ent. 41.

Promiſes relating to Marriages.

Upon an Agreement made between the Plaintiff and the Defendant, upon a Marriage to be had between the Plaintiff's Son, and the Defendant's Daughter; in Conſideration that the Plaintiff had undertaken to perform the Agreement on his Part, the Defendant promiſed to pay the Marriage Portion at ſeveral Days, and a Demurrer thereto. Wi. Ent. 93.

In Conſideration that the Plaintiff had before that Time married the Daughter of the Defendant, he undertook to pay the Plaintiff 6 l. 13 s. 4 d. within two Years then next following. 1 Bro. 47.

In Conſideration that the Plaintiff would marry A. a Friend of the Defendant's, he undertook to pay 10 l. and defray the Charges of the Wedding Dinner. Bro. V. M.

Againſt the Brother of the deceaſed who owed the Plaintiff 40 l. to be paid on the Day of Marriage, or Day of Death; another Promiſe upon a Diſcourſe between the Plaintiff and the Defendant, if the Plaintiff would prove the Death by the Oath of Witneſſes, which he did. Red. Decl. 54.

In Conſideration that the Plaintiff would marry one of the Defendant's Daughters, he promiſed to pay the Plaintiff 20 l. upon the Day of Marriage, and to give the Plaintiff as much Money, beſides the 20 l. as he gave with any other of his Daughters in Marriage, with an Averment, that he gave one of his Daughters 110 l. for her Marriage Portion. Tho. 20. Han. 12.

Upon mutual Promiſes of Marriage between the Plaintiff and Defendant. 2 Mod. Int. 107. Vid. 12.

In Conſideration that the Plaintiff would marry a Daughter of the Defendant, he promiſed to pay the Plaintiff 120 l. and to give her two Suits of Cloths at the Day of Marriage. Rob. Ent. 39. Bro. Vad. Me. 41.

The like upon a Promiſe by the Defendant, to pay the Plaintiff 100 Marks. Bro. Red. 24.

The like to pay the Plaintiff Goods and Money to the Value of 100 l. Han. 42, 43.

The like to marry the Defendant's Siſter. Cl. Aſſ. 271.

The like to marry the Defendant's Cozen. Rob. En. 105. Cl. Man. 145.

Upon a Diſcourſe of Marriage then to be had between the Plaintiff and E. in Conſideration of 12 s. paid by the Defendant to the Plaintiff; the Plaintiff promiſed to pay the Defendant 20 s. on the Day of Marriage. Bro. Vad. Me. 10.

In Conſideration that the Plaintiff would expedite a Propoſal of Marriage between him and M. the Defendant's Daughter a Widow, and one L. the Defendant promiſed, that if the Portion of M. ſhould by an Inventory exhibited be leſs than 1000 l. the Defendant promiſed to make it 1000 l. Rob. En. 52. Hern 191. in Engliſh.

Where the Plaintiff was ſeiſed of Copyhold Lands, that in Conſideration the Plaintiff would marry his Daughter, the Plaintiff promiſed him an Eſtate therein, and to ſurrender the Tenements to the Uſe of the Plaintiff for Life. 3 Brow. 48. in Engliſh.

In Conſideration that the Plaintiff would permit the Defendant's Son to marry the Plaintiff's Daughter, and that the Plaintiff would ſurrender Copyhold Lands to their Uſe, the Defendant promiſed to pay the Plaintiff 10 l. Aſh. 19.

Upon Promiſes relating to Feeding of Cattle.

In Conſideration that the Plaintiff would depaſture a Colt for the Defendant, the Defendant promiſed to pay as much as it was worth. Tho. 15.

In Conſideration that the Plaintiff would depaſture ten Steers for the Defendant for the Space of five Weeks, the Defendant promiſed to pay the Plaintiff 30 s. and in Conſideration that the Plaintiff would depaſture for the Defendant other Steers for ſo long Time, the Defendant promiſed to pay as much as it was worth. Han. 37.

Upon an Inſimul Computaſſet for the depaſturing of Sheep. Mo. Int. 12.

For an Executor againſt an Executor of an Executor, for depaſturing Cattle by the Plaintiff's Teſtator, for the Defendant's Teſtator, a Quantum Meruit for the ſame; the like for Hay ſold. 1 Brown. 20.

That the Defendant on ſelling Sheep to the Plaintiff, then in Cuſtody of E. D. to feed, promiſed to pay E. D. for the Feeding, and to diſcharge the Plaintiff therefrom, which he had not done. Cl. Aſſ. Clift 65, 66, 67.

For the Plaintiff's feeding of Lambs till ſuch a Feaſt, which he had ſold to the Defendant. Cl. Aſſ. 230.

Other Aſſumpſits for feeding Cattle. Cl. Man. 152. Cl. Aſſ. 270.

That in Conſideration that the Plaintiff would receive into his Inn in London, two Geldings of the Defendants to be kept in a Stable with Oats, Hay, and other Neceſſaries, the Defendant promiſed to pay Quantum Valerent, and one Gelding was kept there for 18 Days, and the other 120 Days. 3 Brown. 47.

In Conſideration that the Plaintiff would depaſture for the Defendant, the Defendant promiſed to pay as much as it was worth, and another Indebitatus Aſſumpſit, and a Quantum Valerent for feeding two Cows all the Winter. 3 Brown. 55.

For Curing Diſeaſes.

An Indebitatus Aſſumpſit, and Quantum Meruit for curing the Defendant of a broken Leg. Vid. 5 Mo. Int. 5. Cl. Man. 59.

An Indebitatus Aſſumpſit for Work and Labour, imploy'd in curing the Defendant, and for providing and adminiſtring Medicines by a Doctor of Phyſick, and a Quantum Meruit for the ſame. Vid. 52.

Againſt an Executor upon a Promiſe of the Teſtator to pay 20 l. for Curing of a Diſeaſe called a Rupture, whereof 15 l. had been paid. Bro. Red. 35. 1 Brown. 231.

The like of a Diſeaſe called the King's Evil. Cl. Man. 130.

For a Surgeon retained, to cure a Diſeaſe called a running of the Reins, for 40 s. to be paid upon the Cure, and the Defendant refuſed to uſe the Plaiſters and Phyſick prepared for him, or to pay the Plaintiff for the ſame. Bro. Red. 45. 1 Brown. 251.

A Quantum Meruit for curing the Defendant's Horſe of the Staggers. Ro. Ent. 32.

An Aſſumpſit to pay the Plaintiff 20 l. in Hand, and after the Cure performed 30 l. in Conſideration the Plaintiff would cure the Defendant's Daughter of a broken Thigh. 3 Brownl. 43. Hern 249.

By an Apothecary for adminiſtring Medicines to a third Perſon. Lill. Ent. 24, 36.

By a Doctor of Phyſick. Lill. Ent. 25.

By a Phyſician for curing the Defendant's Wife of a Lunacy. Lill. Ent. 25.

An Indebitatus Aſſumpſit for a Surgeon's Salary in a Voyage, and a Quantum Meruit for the ſame. Vid. 51.

The like for other Cures performed by a Surgeon. Cl. Man. 59. Re. Dec. 52. 2 Inſt. Cl. 141, 142.

Upon Promiſes relating to Awards.

Where the Plaintiff and Defendant had ſubmitted themſelves to an Award concerning Treſpaſſes, and the Defendant, in Conſideration of the Submiſſion, and of ſix Pence paid, and of the Plaintiffs Promiſe to perform the Award, the Defendant promiſed, that if he did not perform the Award, he would pay the Plaintiff 20 l. 2 Brown. 25. Bro. Red. 41, 80.

The like upon a Treſpaſs and Aſſault. Han. 13. The like upon ſeveral other Controverſies. Bro. Red. 41, 11. 1 Saund. 28. The like of all Actions and Suits, &c. Tho. 19.

Where the Plaintiff and Defendant ſubmitted themſelves to an Award, concerning ſeveral Debts, Demands and Accounts, which were between the Plaintiff and Defendant, and two others; and if the Arbitrators ſhould not make the Award before ſuch a Feaſt, that then they would ſtand to the Award of an Umpire; and in Conſideration of ſix Pence paid, and of the Plaintiff's Promiſe to perform the Award, the Defendant promiſed, that if he did perform the Award, he would pay the Plaintiff 100 l. the Umpire made an Award which the Defendant had not perform'd. Wi. Ent. 470. Co. Ent. 3. 1 Brownl. 243.

Where there were Controverſies between the Plaintiff and Defendant, who had ſubmitted themſelves to an Award; and in Conſideration that the Plaintiff would ceaſe all his Suits, the Defendant undertook to pay the Plaintiff 20 l. if the Controverſies were not determined by Arbitrators. Ro. Ent. 101.

Where the Plaintiff and Defendant ſubmitted themſelves to an Award of an Arbitrator of Matters in Litigation depending between them; and in Conſideration that the Plaintiff had undertaken to perform the Award on his Part, the Defendant undertook to perform the Award on his Part, which he had not done. Bro. Red. 113.

Upon an Award of ſeveral Matters in Difference, that the Defendant ſhould pay 40 l. upon Requeſt, if he ſhould not ſtand to the Award of F. B. but doth not aver any Requeſt; therefore held ill. 1 Saund. 28.

Upon a Reference to an Arbitrator, upon a Diſcourſe concerning Exchanging of Horſes. 2 Mo. Int. 51. Clift 72.

Promiſes upon Wagers.

In Conſideration of 5 s. depoſited by the Plaintiff to the Uſe of the Defendant in the Cockpit, where two Cocks were fighting, the Defendant undertook to pay the Plaintiff 10 l. if ſuch a Cock beat ſuch a Cock in the Battle. Wi. Ent. 98.

Upon a Wager concerning weighing of Cloth. Wi. Ent. 110.

Where the Plaintiff delivered to the Defendant being the Bailiff of a Hundred, a Warrant and Money, to attach the Goods of M. upon a Plaint in the Hundred Court; and the Defendant in Conſideration of two Pence, undertook to pay the Plaintiff 10 l. if the Shop-door of M. was not ſhut in ſuch a Manner, that he could not execute his Warrant. 2 Brown. 1.

Upon a Diſcourſe between the Plaintiff and Defendant, about the Plaintiff's performing a Journey on Foot; in Conſideration that the Plaintiff would deliver to W. 80 s. to the Uſe of the Defendant, if the Plaintiff ſhould not perform the Journey from his own Houſe to M. in ſuch a Day, the Defendant undertook to pay the Plaintiff 19 l. 15 s. upon his Return, if he did perform it. Ro. Ent. 39.

An Aſſumpſit for Money loſt on a ſhooting Match. Ro. Ent. 63. Hern 176.

The like upon a Horſe-Race. 2 Mod. Int. 49. Hern 176.

In Conſideration that the Plaintiff had undertaken to carry ſeven Quarters of Barley in a Cart with five Horſes, from the Top to the Bottom of a Hill before ſuch a Day, or in Default thereof, to pay the Plaintiff 8 l. the Defendant paid the Plaintiff 2 s. 6 d. and undertook to make it up 8 l. if the Plaintiff did carry, &c. Bro. Red. 29.

Upon a Wager, if ſuch a City ſhould be in the Hands of the Duke of Savoy before ſuch a Day. Bro. Met. 2.

In Conſideration that the Plaintiff had undertaken to pay the Defendant ſuch Sums which he ſhould get at a Play called Hazard, the Defendant undertook to pay the Plaintiff ſuch Sums as he ſhould get at the ſame Play, and the Plaintiff got 30l. which the Defendant had not paid. Bro. Met. 292. Ven. 175.

Upon a Wager at Wreſtling. Hern 79.

Upon a Wager concerning Ejecting the Plaintiff out of Lands. 3. Brownl. 62.

Aſſumpſits upon Iſſues directed by the Court of Chancery.

By Way of Wager, that the Payment of Monies at Haberdaſhers-Hall, was a good Payment, within the Intent of the Act of Oblivion, with an Averment, that it was a good Payment, and a Demurrer thereupon. 2 Saund. 277. Han. 130.

Upon three feigned Iſſues out of Chancery to try the Value of a Perſonal Eſtate, and two Manors. 2 Mo. Int. 68.

Upon an Iſſue directed out of the Court of Chancery to try a Title at Comon Law, concerning a Liberty of a Fold-Courſe. Ro. Ent. 48.

Upon an Iſſue directed out of the Court of the Dutchy of Lancaſter, to be tried at the King's Bench, concerning Lead-Mines belonging to a Manor within that Dutchy. Bro. Red. 114.

Upon an Iſſue out of Chancery to be tried, whether it was agreed between him and the Plaintiff in making a Bond, that E. ſhould not pay more than 5l. if the Condition of the Bond ſhould not be performed. 2 Brown. 8.

A Declaration in a feign'd Action, directed out of Chancery, to ſettle a Difference in Partnerſhip. Lilly 45, 48, 66.

Another againſt an Executor and Donee, concerning Exchequer-Tallies. Lilly 65.

Declarations on Promiſſory Notes, and Bills of Exchange.

On Promiſſory Notes.

Upon an Aſſumpſit againſt the Maſter, on a Promiſſory Note drawn by the Servant. Lill. Ent. 43.

By Aſſignees of two Bankrupts, on Notes given by the Defendant's Servant for the Defendant, payable to the Bankrupts. Lill. Ent. 41.

Againſt Executors on a Promiſſory Note indorſed to the Plaintiff. Lill. Ent.* 44.

On a Promiſſory Note given by one Partner, on the Behalf of the other. Lill. Ent. 48.

By the Indorſee of an Indorſee of a Promiſſory Note brought againſt the Drawer. Lill. Ent. 73.

On a Promiſſory Note againſt the Indorſor. Lill. Ent. 54

By an Aſſignee of a Promiſſory Note againſt Executors. Lill. Ent. 45.

Againſt the Drawer upon a Goldſmith's Note, payable to one or Bearer. 3 Lev. Rep. 296. Clift 913.

Upon Note given by the Goldſmith's Servant. Clift 914, 916.

On Bills of Exchange.

Againſt the Drawer in England upon the Cuſtom, where the Defendant made a Bill of Exchange, directed to a Merchant at Amſterdam, for Payment of Money at two Uſances and an Half, who had not paid it; whereby the Bill was proteſted according to the Cuſtom of Merchants. Vid. 31, 34, 66, 67.

The like againſt the Drawer on an Inland Bill. Clift 911, 924.

A Declaration upon a Bill of Exchange againſt the Drawer, ſetting forth, That the Plaintiff had paid the Bill for the Honcur of the Indorſor; in which it is alledged, that two Bills of the ſame Effect were drawn, and the firſt accepted, but afterwards was proteſted for Non-payment, and Judgment in the King's Bench. But it was afterwards reverſed in the Exchequer, becauſe that the Cuſtom was too General. Lut. 892.

Upon two Bills of Exchange, where the Plaintiff paid 45l. Current Engliſh Money at Iſlington to the Defendant, who thereupon drew two Bills of Exchange upon one C. his Factor then reſiding at Venice, appointing him to pay 200 Ducats Venice Money to the Plaintiff, upon two Days Sight, which was not performed, either by the Factor at Venice, or the Defendant afterwards in England. Bro. Vad. 19.

Againſt the Drawer of a Foreign Bill of Exchange, by the Perſon to whom the ſame was payable. Lill. Ent. 55. Clift 921, 924. Vid. 67. Tho. 41.

Againſt the Acceptor.

Upon the Cuſtom of Merchants, where W. directed the Bill to the Defendant, to pay the Plaintiff 90 l. within three Days after Sight, which Bill the Defendant accepted, and promiſed to pay. Vid. 17. 2 Mod. Int. 121. Bro. Met. 27.

The like upon the Cuſtom of Merchants and others uſed in London. Bro. Met. 27. Cl. Aſſ. 236. 2 Mo. Int. 112. Cl. 913. Clift 918, 920.

The like where the Plaintiff declared upon a Cuſtom uſed between Merchants at A. and Merchants at London, upon a Foreign Bill directed to the Defendant, for the Payment of Money at two Uſances to the Merchant at London, or his Order, which the Defendant accepted. Vid. 30. Bro. Red. 77. Bro. V. M. 12. 2 Mod. Int. 124. Cl. 896, 897.

The like upon the Cuſtom of the City of Briſtol, on a Bill, payable to the Party, or to his Order. Clift. 899.

The like upon a Bill of Exchange from Dublin in Ireland, to pay Money at twenty-one Days after Sight, which the Defendant accepted, and promiſed to pay. Vid. 33. Bro. Va. Me. 14.

By an Indorſee againſt the Acceptor Clift 923.

The like where the Defendant refuſed to accept the Bill, whereby it was proteſted. Vid. 69. Cl. Man. 140. Clift 963.

Where the Plaintiff by his Factor had deliver'd to the Defendant's Factor 1000 Ducats Venice Money, who gave him a Bill, directed to the Defendant to pay at three Uſances, viz. at the End of three Months, according to the Rate of Engliſh Money; and the Defendant afterwards accepted the Bill, and promiſed to pay the Money. Vid. 70.

Where the Defendant had accepted a Foreign Bill, and had not paid it. Bro. Red. 75. Cl. 893, 897.

The like where the Defendant had accepted the Bill, and had paid Part, and promiſed to pay the Remainder. Bro. Red. 76. Clift 922.

Upon a Bill of Exchange againſt the Acceptor, who had accepted to pay the Money by a Bank Bill, and not otherwiſe; and a Breach aſſign'd, that the Defendant deliver'd a Bank-Bill to the Plaintiff, in which the Defendant had no Intereſt; on a Verdict on Non Aſſumpſit, and ſeveral Exceptions, Judgment for the Plaintiff. Lut. 277. 1 Ven. 64.

Againſt the Acceptors of a Foreign Bill of Exchange, payable at two Uſances and an Half. Lill. Ent. 90.

Upon a Bill drawn by a Merchant at Venice, upon a Merchant at London, where the Cuſton is alledg'd to be, that if the ſecond Indorſor pays the Bill to the ſecond Indorſee, that then the ſecond Indorſor ſhall have an Action againſt him, to whom the Bill was directed, and had accepted, and had not paid it, in which Declaration the Uſances are alledg'd to be three Months. Lut. 885.

A Declaration upon a Bill of Exchange againſt the Acceptor, ſetting forth, that a Bill of Exchange was directed to the Defendant to pay the Plaintiff ten Pounds within ten Days after Sight, and the Original was ſued out the 10th Day, accounting the Day of Sight for one; and yet Judgment was given for the Plaintiff. 2 Lut. 1589.

Upon a Bill of Exchange directed by a Merchant at Lisbon in Spain, to the Defendant, deſiring him to pay 115 l. 17 s. 6 d. to the Plaintiff, which Bill the Defendant accepted, yet afterwards refuſed to pay the Money to the Plaintiff; in which Action the Cuſtoms of London and Lisbon, uſed among Merchants touching Bills of Exchange, are ſet forth. Bro. Vad. 14.

The like upon two Bills of Exchange, directed to the Defendant by his Factor, deſiring him to pay 72 l. Sterling to the Plaintiff in London, in Conſideration of 107 l. 6 s. 8 d. Flanders Money received at Antwerp of the Plaintiff's Factor for the Defendant's Uſe. Bro. Va. Me. 16.

The like upon two Bills of Exchange, directed to the Defendant in London by his Factor, &c. which Money the Defendant refuſed to pay, notwithſtanding his Acceptance of the ſaid Bills. Bro. Va. 18.

Upon a Bill of Exchange againſt the Acceptor, and a Demurrer to the Declaration, and a good Exception taken, viz. That the Acceptor is to pay the Bill according to his Acceptance, and the Bill doth not mention any Time; nor is it alledg'd, that the Defendant had accepted to pay the Bill immediately, or at any Time certain. Lut. 231.

Againſt the Defendant and his Partner, (who was outlaw'd) upon three Bills of Exchange, payable at double Uſance to the Plaintiff or Bearer, (the Second and Third not being paid) for 150 l. Sterling, &c. and that the Defendant accepted the firſt Bill, and ſubſcribed it with his own Hand. Bro. Vad. Me. 12.

Againſt

Againſt him who undertakes for the Honour of the Drawer, Acceptor or Indorſor.

Upon two Bills of Exchange, the Defendant promiſed, that if W. would not accept the ſaid Bills, or one of them, nor pay, &c. that then the Plaintiff would upon Requeſt, with an Averment of Refuſal to accept; whereupon the Plaintiff proteſted, and gave the Defendant Notice; and the Plaintiff lays Special Damage for not receiving his Money at the Time mentioned. Bro. Vad. Me. 22, 23.

The Defendant made a Bill, and promiſed to pay to one G. M. or Bearer 44 l. for Value receiv'd, and appointed the Payment of the Bill to the Plaintiff; That the Defendant had Notice, and promiſed to pay, if the Plaintiff would not return the Bill. (2.) Whereas the Plaintiff at the Inſtance of the Defendant had paid to G. 44 l. for Value receiv'd, the Defendant undertook to pay, &c. (3.) General Count upon the ſame Bill drawn by the Defendant; whereby according to the Cuſtom of Merchants, the Defendant was liable to pay. Clift 929.

A Declaration upon a Bill of Exchange drawn by a Merchant at Leghorn, upon a Merchant at London; wherein the Cuſtom is ſet forth, that if any Merchant, &c. (for the Honour of him to whom the Bill was at firſt payable, and had indorſed it to another) ſhall pay the Bill to the laſt Indorſee, the Bill being before proteſted for Non-payment) then the Merchant to whom the Bill was at firſt payable, and who firſt indorſed it, ſhall have an Action againſt that Merchant, who at firſt took upon him to write upon the Bill to pay the ſame, for the Honour of the Drawer (the Bill being before proteſted) for the Value of the Bill, and all Charges, &c. Judgment for the Plaintiff affirmed upon a Writ of Error. Lut. 896.

On a Promiſſory Note againſt the Indorſor. Lill. Ent. 43, 54.

By and againſt the Indorſor.

Where the ſecond Indorſee brought an Action againſt the Drawer, and had Judgment; and after that, and before Execution, he brought an Action againſt the firſt Indorſor; and it was adjudged upon a Writ of Error, that the Action would lie. 1 Lut. 878.

By the Indorſee.

By an Aſſignee upon the Cuſtom of Merchants upon three ſeveral Notes. 2 Mo. Int. 126. Clift 893.

By an Aſſignee againſt a Company of Merchants upon a Foreign Bill. 2 Mo. Int. 128.

By an Aſſignee againſt the Drawer of an inland Bill of Exchange. Lill. Ent. 44.

By the Indorſee of a Promiſſory Note againſt Executors. Lill. Ent. 45.

By the Indorſee of an Indorſee of a Promiſſory Note againſt the Drawer. Lill. Ent. 73.

By Aſſignees of two Bankrupts, on Notes given by the Defendant's Servant for the Defendant, payable to the Bankrupts. Lill. Ent. 41.

Declarations upon other Promiſes relating to Merchants.

An Action founded upon a Bill of Loading againſt the Maſter of a Ship, wherein the Plaintiff had put on Board diverſe Wares, &c. at L. beyond Sea, to be carried directly to the City of London, which the Defendant promiſed to do for the Freight, and to deliver the Goods in good Condition. But for want of due Care, the Defendant had ſpoiled the Goods. Clift 37.

That the Defendant in Conſideration of 3 l. 12 s. by a Policy of Aſſurance, undertook to aſſure the Plaintiff's Ship, Tackle and Furniture, to the Value of 100 l. Vid. 26. 2 Saund. 200. 2 Mo. Int. 59.

The like of Goods. Vid. 48. Cl. Aſſ. 224. Bro. Vad. Me. 27. Bro. Met. 37, 44.

Againſt the Aſſureds upon a Policy of Aſſurance. Clift 77.

Where there was a Diſcourſe between the Plaintiff and the Defendant concerning a Ship and the Cargo thereof; and it was agreed between the Parties, that the Defendant ſhould have the Ship to his own Uſe, and ſhould pay the Plaintiff all Sums of Money as he had laid out about her, and the Plaintiff ſhould have all the Goods which he had bought in the Voyage to his own Uſe; and both Parties reciprocally promiſed to perform the Agreement, which the Defendant had not done. 3 Lev. Rep. 315.

That the Defendant offer'd to ſell a ſixth Part of a Ship, and it was agreed that the Defendant ſhould ſell all his Intereſt, &c. to the Plaintiff, and that the Sale ſhould be in Writing; whereupon the Plaintiff ſhould pay 600 l. and ſo more or leſs according to that Rate; and the Plaintiff paid 20 l. before-hand, and the Action brought for the 20 l. the Agreement never having been reduced into Writing. 3 Lev. Rep. 316.

Upon a Special Agreement, in Conſideration that the Plaintiff would buy and ſell Wares and Merchandizes for the Defendant beyond Sea, the Defendant promiſed to accept, and pay any Bill of Exchange drawn upon him by the Plaintiff, ſo that the Money did not exceed the Sum laid out by the Plaintiff; and the Defendant did not accept ſeveral Bills, but they were proteſted; and an Indeb. Aſſ. for 8072 l. 7 s. 2 d. and a Quantum Valebant for Goods ſold and deliver'd, and a Quantum Meruit for Work and Labour. Cli. 903, 904.

In Conſideration that the Plaintiffs would retain the Defendant for their Factor to ſell Slaves, and divers Commodities at Virginia; the Defendant promiſed to give a juſt Account of the Profits of the Voyage. Bro. Va. Me. 70.

An Indebitatus Aſſumpſit for the Hire of a Hoy; and a ſecond Count, that in Conſideration that the Plaintiff had lent to the Defendant a Hoy for the Hire of 30 s. that the Defendant promiſed to pay, &c. a Third. That in Conſideration the Plaintiff had lent the Defendant a Hoy, the Defendant promiſed to pay ſo much as it was worth. Clift 908.

Againſt a Maſter of a Veſſel by an Executor, for Wages for the Service of her Huſband's Apprentice in a Voyage to the Eaſt-Indies. Lilly's Ent. 33.

By a Maſter of a Veſſel for Freight only. Lilly's Ent. 54.

By the Maſter of a Ship for Freight and Average. Lill. Ent. 33.

By Executors againſt a Maſter of a Veſſel for Goods tranſported by him from Guinea to London. Lill. Ent. 26.

Againſt a Partner of a Ship for Repairs, and for the Maſter's Salary. Re. Dec. 56.

In Conſideration that the Plaintiff would permit J. his Apprentice to go a Voyage as a Ship-Wright with the Defendant being Maſter of the Ship, the Defendant undertook to pay the Plaintiff 38 s. for every Month, and bring back the ſaid J. at the End of the Voyage. Bro. Red. 41.

A Declaration for a Salary in piloting a Ship; and a Quantum Meruit for the ſame. Clift 911, 912.

For Work and Labour, in buying and ſending over Merchandizes beyond Sea. Clift 906.

Upon Promiſes relating to Stocks.

On a Special Agreement in Writing to tranſfer Stock in the Bank of England. Lev. Ent. 27.

Upon a Special Contract to deliver 300 l. third Subſcription South-Sea Stock to the Plaintiff. Lill. Ent. 85.

Another by an Executrix for not tranſferring South-Sea Stock. Lill. Ent. 42.

Upon By-Laws.

Upon an Ordinance or By-Law of the Company of Cooks in London, for refuſing to take the Livery. Clift 901.

Upon a By-Law of the Felt-makers, for ſetting up as a Maſter-Workman before he had made three Hats or Felts, and offered them to the View of the Company, purſuant to their By-Law. Clift 901.

The like by the Felt-makers for taking two Apprentices contrary to one of their By-Laws. Clift 902.

Promiſes relating to Lands.

The Plaintiff being a Cuſtomary Tenant, with others for Lives ſucceſſively, where the Cuſtom of a Manor was, that the firſt Perſon named in the Copy ſhould ſurrender to his own Uſe, and to the Uſe of two others named by him; in Conſideration that the Plaintiff for 12 d. in Hand paid, and 50 Quarters of Salt to be deliver'd, had undertaken to ſurrender the Cuſtomary Lands to the Uſe of himſelf, and two others named by the Defendant, and had procured a Court, &c. The Defendant promiſed to appear at the Court, and accept the Eſtate, and deliver the Salt at ſuch a Time. That the Plaintiff had procured a Court, but the Defendant did not appear. Wi. Ent. 65.

In Conſideration that the Plaintiff would ſurrender Cuſtomary Lands to the Uſe of the Defendant and his Heirs, the Defendant undertook to pay the Plaintiff 20 l. within a Month after the Surrender. 1 Brown. 54. 2 Brown. 4.

In Conſideration that the Plaintiff would procure J. S. his Son to make an Aſſurance to the Defendant, of certain Cuſtomary Lands, and would diſcharge the Defendant from an Agreement made between them, the Defendant promiſed to pay the Plaintiff 100 s. 2 Brown. 3, 4.

Where the Defendant ſold Cuſtomary Lands, and had undertaken to make the Plaintiff a ſufficient Surrender therein within ſuch a Time. Pl. Gen. 16.

Where the Plaintiff bought Lands of the Defendant, and the Defendant promiſed him to make a ſufficient Eſtate therein, within ſuch a Time. 1 Brown. 29.

Where the Plaintiff ſold Lands to the Defendant for 200 l. and in Conſideration that the Plaintiff undertook to make him an Aſſurance thereof, to be deviſed by the Defendant, the Defendant promiſed to pay him 100 l. at the Time of ſealing the Conveyance, and another 100 l. at ſuch a Feaſt, and to give him a Horſe of 11 l. Value in Part of Payment. Bro. Red. 24.

Where the Defendant, in Conſideration of Money paid, and annually to be paid upon an Aſſurance, promiſed to make the Plaintiff a good and legal Conveyance of the Lands in Fee. Rob. Ent. 72.

In Conſideration that the Plaintiff had demiſed to the Defendant Part of his Houſe, the Defendant promiſed to give the Plaintiff a Quarter's Warning, or otherwiſe to give 5 l. upon Demand. Cl. Man. 126.

Where the Defendant demiſed to the Plaintiff a Manor which he could not have demiſed. Cl. Aſſ. 209.

Where the Defendant agreed to ſell the Plaintiff an Houſe, and undertook to keep the Plaintiff indempnified in pulling down, and laying to the Ground the Houſe, and one R. B. brought an Action of Treſpaſs. Clift 44.

Where there was a Diſcourſe had between the Plaintiff and Defendant concerning a Demiſe; whereupon ſeveral Agreements were made, which the Defendant had not performed. Tho. 23. 2 Brown. 2.

Where the Defendant promiſed that he would not aſſign, and would lay the Dung upon the Premiſſes, and broke his Contract. Clift 43, 47.

In Conſideration that the Plaintiff had ſurrendered a Shop to the Defendant, the Defendant undertook to put the Plaintiff into quiet Poſſeſſion into another Shop of his, or to pay the Plaintiff 20 l. 1 Brown. 25.

That in Conſideration that the Plaintiff would aſſign a Meſſuage, and his Eſtate and Intereſt therein to the Defendant, he promiſed to pay 450 l. Clift 46.

In Conſideration that the Defendant had received the Profits of Lands belonging to the Defendant and his Siſters, and had never delivered them an Account, he promiſed to pay the Plaintiff 40 l. as a Recompence for his Part. 1 Brown. 55.

Upon a Diſcourſe, the Defendant agreed to make the Plaintiff a Leaſe for Years under ſuch a Rent; and in Conſideration thereof, and that the Plaintiff would accept the Leaſe, and pay the Rent, the Defendant paid the Plaintiff ſix Pence in Part, and promiſed to make a Leaſe at ſuch a Feaſt, or to pay ſo much Money as would make that ſix Pence ten Pounds. Han. 55.

The Defendant ſold a Term in Lands to the Plaintiff for Money paid in Hand, and the Reſt to be paid; and the Defendant in Conſideration thereof, undertook and warranted the Premiſſes, containing three hundred Acres to be of the yearly Value of 4 l. per Acre, whereas the Premiſſes were not of ſuch a Value. Rob. Ent. 33.

In Conſideration that the Plaintiff would accept of a Demiſe of the Defendant of a Meſſuage out of Repair under ſuch a Rent, the Defendant undertook to repair the Meſſuage within eight Months. Rob. Ent. 10.

In Conſideration that the Plaintiff being the Proprietor of a Rectory, would Demiſe to the Defendant a Meſſuage, and Lands diſcharg'd from the Payment of Tithes, the Defendant undertook to repair the Meſſuage during the Term; and at the End of the Term to leave it in good Repair. Wi. Ent. 73, 93.

In Conſideration that the Plaintiff would permit the Defendant to hold Lands for three Years, the Defendant undertook to pay 3 s. 6 d. yearly, beſides the yearly Rent. 1 Brown. 81.

Where the Defendant was poſſeſſed of Lands, in Conſideration of Money paid, and of a yearly Rent to be paid by the Plaintiff, undertook to let Lands for four Years, if A. ſhould live ſo long. Vid. 96. Rob. Ent. 109.

Where the Defendant for 40 l. in Hand paid by the Plaintiff, undertook to demiſe the Manor and Lands to the Plaintiff for the Term of ten Years, under an annual Rent. Pl. Gen. 16.

The Defendant claiming a Title to Lands in the Poſſeſſion of the Plaintiff, which the Plaintiff had tilled and ſown, in Conſideration that the Plaintiff, at the Inſtance of the Defendant, would deliver up quiet Poſſeſſion of the Lands, the Defendant undertook to pay the Plaintiff all the Expences which the Plaintiff had been at, in and about tilling the Lands, without any expreſs Time of Payment. Han. 51.

Aſſumpſit for Rent. Clift 43.

An Action upon the Caſe for Rent, that in Conſideration that the Plaintiff would permit the Defendant to occupy, the Defendant promiſed to pay ſo much as the Plaintiff deſerved. 3 Lev.

Rep. 146. The like. Red. Dec. 9. Clift 42, 46.

Upon a Diſcourſe to perform an Agreement to pay 8 l. for building an Houſe, but doth not aver that he built it, nor that he was hinder'd by the Defendant; and therefore held ill. 2 Saund. 346.

Where the Defendant upon a Demiſe of Lands promiſed, that the Plaintiff ſhould not be ejected within the Term. Cl. Man. 78.

For not performing an Agreement as to the Delivery of a Meſſuage, and Lands to the Plaintiff. Red. Decl. 5. Clift 40, 41.

For not performing an Agreement, as to permitting the Plaintiff to enter into the Defendant's Lands, to bring and throw down Stones there, in order to make a Stone-wall. Red. Decl. 7.

Where the Plaintiff bought Lands of the Defendant, and the Defendant undertook to enfeoff the Plaintiff within ſuch a Time, which he had not done, but within that Time ſold them to A. and enfeoffed him thereof. Raſt. Ent. 6, 685. Vet. Int. 48.

For an Executor where the Teſtator was poſſeſſed of Tenements for a Term of Years, and of Goods in a Meſſuage; and upon a Diſcourſe, the Defendant, in Conſideration that the Teſtator had undertaken to convey the Eſtate to the Defendant, and to leave him the ſeveral Lands at ſeveral Times, and the Houſes repaired, undertook to pay the Teſtator 500 l. Hern 66.

In Conſideration that the Plaintiff demiſed to the Defendant a Cloſe of Land, to have Half the Corn for three Years, the Defendant undertook that he would yearly ſow the Cloſe, and render Half the Corn: Breach, that the Defendant the firſt Year left two Acres unſown. Hern 94.

Where the Defendant was ſeiſed of Cuſtomary Lands for Life, ſold the Plaintiff his Eſtate therein, and the Cattle and Goods, and undertook to cauſe a ſufficient Eſtate to be made to the Plaintiff in the Lands, and to deliver the Goods. Raſt Ent. 7.

Upon Promiſes relating to Indemnity.

Where the Defendant agreed to ſell to the Plaintiff a Meſſuage, and to indemnify him in pulling down the Houſe. Clift 44.

The Defendant bought a Cow of R. which R. would not deliver unleſs the Plaintiff would promiſe the Payment of the Money at ſuch a Day. The Defendant did not pay the Money at the Day, upon which the Plaintiff was threatned to be ſued, and was forced to pay the Money. 1 Brown. 32.

The Plaintiff and Defendant became bound with J. the Defendant's Father for the Debt of J———. In Conſideration that the Plaintiff had ſold to the Defendant certain Cattle at ſuch a Price, the Defendant promiſed to indemnify the Plaintiff from the Debt; which was not done; by which the Plaintiff was ſued, and compelled to pay the Debt, with Coſts of Suit. 1 Brown. 40. Raſt. Ent. 12.

The Plaintiff, at the Inſtance of the Defendant, became bound with him for a Sum of Money, and the Defendant undertook to indemnify him; which he did not do; by which the Plaintiff was ſued upon the Bond in the Common Pleas, and compelled to pay 20 l. in Diſcharge of the Debt. 1 Brown. 68. 1 Brownl. 240.

The Defendant was in Priſon upon an Execution in N. and the Defendant, in Conſideration that the Plaintiff would become bound for the Debt and Damages, to diſcharge the Defendant out of Priſon, he undertook to indemnify the Plaintiff therefrom; which he did not do; by which the Plaintiff to avoid the Charges of a Law-Suit, paid the Money. 1 Brown. 74. Cl. Aſſ. 215.

In Conſideration that the Plaintiff conſented, that the Defendant ſhould defend a Suit in Ejectment in the Plaintiff's Name, he undertook to indemnify him from all Damages to be adjudged againſt him, and the Plaintiff was taken in Execution, and paid 19 l. for Damages, Expences, and Coſts, &c. Tho. 12.

In Conſideration that the Plaintiff became bound with the Defendant for 82 l. the Defendant promiſed to indemnify him which he did not, by which the Plaintiff was taken upon an Outlawry, and was compelled to pay the Money, and ſeveral Sums of Money in defending the Suit. Bro. Met. 8.

The Defendant became bound to the Sheriff for the Appearance of the Plaintiff, who did not appear, and the Defendant in Conſideration of 50 s. in Hand paid by the Plaintiff, undertook to indemnify the Plaintiff from the Bond; which he did not do; but the Sheriff ſued the Plaintiff, and had Execution againſt him. Rob. Ent. 92. The like Bro. R. 39. Red. Decl. 59. Clift 79.

The Defendant undertook to indemnify the Plaintiff from any Trouble from taking a Diſtreſs. Clift 80.

The Plaintiff was bound for the Appearance of the Defendant at the Seſſions, and the Defendant undertook to indemnify the Plaintiff, &c. Cl. Aſſ. 216.

E. recovered a Judgment in an Action of Scandal, and had 47 l. Damage againſt the Plaintiff, who was proſecuting the Defendant, Brother of E. in an Action of Treſpaſs; and the Defendant in Conſideration of 16 l. paid him by the Plaintiff, for the Uſe of E. and that the Plaintiff would not further proſecute his Suit againſt the Defendant, he undertook to indemnify the Plaintiff from the Damages recover'd againſt him by E. which he had not done, but E. took the Plaintiff in Execution upon the ſaid Judgment. Rob. Ent. 106.

The Plaintiff at the Inſtance of the Defendant, became bound with him for a Sum of Money, and the Defendant promiſed to indemnify him, which he had not done, by which the Plaintiff was arreſted, and held in Cuſtody till he gave freſh Security for the Debt, and was compelled to pay all the Coſts. Han. 45. The like Bro. R. 27.

R. was indebted to N. in 10 l. 10 s. In Conſideration that the Plaintiff, at the Inſtance of the Defendant, became bound with R. to N. in 20 l. for Payment of the ſaid 10 l. 10 s. the Defendant promiſed to indemnify the Plaintiff which he had not done, by which the Plaintiff was compelled to pay 13 l. in Diſcharge of the Bond. Bro. Vad. 4.

For that the Defendant had not diſcharged the Plaintiff from the Payment to E. D. for the Feeding of Sheep, which the Defendant had ſold the Plaintiff, &c. Cl. Aſſ. 208.

The Defendant had not indemnified the Plaintiff for being Bail. Id. 215.

Where the Plaintiff at the Defendant's Requeſt had become bound with him for the Payment of 10 l. which not being paid at the Day, the Plaintiff was ſued upon the Bond; pending, which Suit, the Defendant, in Conſideration of the Premiſſes, promiſed to indemnify the Plaintiff; and afterwards Judgment was obtained againſt the Plaintiff, and he was obliged to pay the Money. 3 Brownl. 71.

Where the Plaintiff had become bound to the Sheriff, for the Appearance of one C. at the Suit of the Defendant, upon an Attachment of Privilege, and the Sheriff was amerc'd for want of an Appearance; and the Defendant in Conſideration of 40 s. undertook to indemnify the Plaintiff from the Bail-Bond. 3 Brownl. 103.

Where the Defendant, in Conſideration that the Plaintiff had become bound for the Defendant's Debt, he undertook to indemnify the Plaintiff, and his Goods were taken upon a Fi. fa. Aſh. 37.

That R. was arreſted by a Plaint in the Court of the Tower of London, and the Defendant in Conſideration that the Plaintiff would be his Bail, undertook to give the Plaintiff 20 l. if he ſhould be damnified; and the Plaintiff after Judgment was taken in Execution, and kept in Cuſtody till he paid the Money. Hern 121.

That T. demiſed Lands to the Plaintiff for a Term of Years rendring Rent, and the Defendant, in Conſideration that the Plaintiff would aſſign the Term to him, undertook to pay the Rent, or to indemnify the Plaintiff therefrom; a Breach, that the Defendant had not paid the Rent, nor indemnified the Plaintiff, who was forced to pay the Money, without alledging any Suit. 3 Brownl. 51.

In Conſideration that the Plaintiff being Under-Sheriff, who endeavour'd to execute a Writ of Ca. Sa. the Defendant undertook to give him 5 l. and to indemnify the Plaintiff, who arreſted the Party, and carried him to the Houſe of Commons, and he was there diſcharged, and the Plaintiff was obliged to lay out ſeveral Sums of Money thereon. Hern 120.

Declarations in Actions upon a Warranty.

For ſelling Cows warranting them to be ſound, and big with Calf, whereas one of them was Barren, and the other had only three Tetes. 1 Brown. 15.

The like of Sheep. 1 Brown. 30. Cl. Man. 111. Tho. 40. Cl. Man. 148.

The like of a Horſe. Vid. 10. Pl. Gen. 18. Han. 84. Tho. 30. 2 Mod. Int. 89. Ra. Ent. 9. Vet. Int. 19. Reg. 108. Hern 223.

The like laid three Manner of Ways, viz. 1. For that the Defendant fraudulently ſold a founder'd Horſe to the Plaintiff, affirming him to be ſound. 2. For that the Defendant fraudulently ſold another Horſe to the Plaintiff that was lame, warranting him to be ſound. 3. For that the Defendant promiſed for ſuch a Price, to ſell the Plaintiff another Horſe without any Infirmity, and falſly and deceitfully delivered the Plaintiff a founder'd Horſe. Clift 932.

For ſelling Yarn, warranting it fit to make Cloth, which was not ſo. 1 Brown. 15.

The like of Wool in the Fleece. Clift 934.

For ſelling the Cow of another warranting it to be the Defendant's own. Tho. 40.

The like of a Horſe. Clift 933. Aſh. 35.

For warranting Butter and Cheeſe to be good, which were not ſo. Clift. 935.

The like of Hops, Ibid.

The like of Wine. Clift 938. Hern. 92.

The like of Wool and Cloth wanting Meaſure. Tho. 34.

The like of Paper. Bro. Red. 18.

The like of Timber. Bro. Red. 80.

The like of Malt. Ra. Ent. 9. Reg. 111. Ub. 245.

For warranting Sacks of Wool to contain ſo much. Dig. 179. 13 H. 4. 1.

For warranting a Horſe hired to be fit for a Journey, which was unable to perform it. Hern 169. 1 Brown. 38.

Declarations in Actions of Deceit

For ſelling the Plaintiff a Cow of another Perſon. 1 Brown. 25. Hern. 102, 224. Aſh. 35.

The like of a Horſe of another exchanged with the Plaintiff, which the Defendant pretended was his Own. Clift 72. Hern 77.

For Wool bought of the Defendant by the Plaintiff, and ſold to another Perſon. Pl. Gen. 14, 19. Ro. Ent. 29.

For Deceit, in not performing a Bargain concerning Cubit-Wood. Clift 96.

For making a Bond to the Plaintiff by a falſe Chriſtian Name. 1 Brown. 27.

That the Defendant procured Men unknown to become Bail for W. by fictitious Names, whereby W. was ſuffered to eſcape, and the Plaintiff loſt his Debt. 1 Brown. 52.

For malitiouſly procuring the Plaintiff to be outlawed in the King's Bench, and taken thereupon. 1 Brown. 87.

For playing with the Plaintiff at Hazard with falſe Dice, and an Indeb' Aſſumpſit for Money had and receiv'd. 2 Brown. 14. Cl. Man. 123.

The like with falſe Cards. Tho. 26.

Againſt a Butcher for ſelling Tallow by falſe Weights. Han. 32.

Againſt the Defendant for ſelling with falſe Meaſure. Tho. 25.

Againſt a Bargeman who had Malt delivered him to carry, and did not deliver ſo many Quarters as were delivered by the Plaintiff. Ro. Ent. 31.

For falſly preſenting a Fact by the Jurors to a Manor Court, by which another was admitted, and the Plaintiff was fraudulently deprived of his Bargain. Bro. Red. 17.

Upon a Sale of Barley, affirming it to be fit to ſow, and delivering Barley Mow-burnt. Clift. 937.

For ſelling corrupt Herrings. Cl. Aſſ. 215.

For a Brewer againſt a Malſter, for ſelling bad Malt. Aſh. 36.

For ſelling the Plaintiff Wax, and delivering Part thereof mix'd with Roſin. Dyer 75.

Againſt a Goldſmith who ſold the Plaintiff a Saphire for a Diamond. Hern 100.

Declarations againſt Attornies for undue Practices in their Imployments.

Againſt an Attorney who acknowledged Satiſfaction upon a Judgment in Debt without a Warrant. 1 Brown. 26. Ro. Ent. 37.

Againſt an Attorney who appear'd without a Warrant for the Plaintiff to an Original without Proceſs. Cl. Aſſ. 286. Hern 145, 180. Aſh. 38.

Againſt an Attorney for ſuing out a Ca. Sa. without a Warrant. Bro. Red. 47.

The like upon an Exigent, where there was a Declaration and a Judgment in Debt by non ſum informatus, and the Money paid by the Plaintiff, and a Verdict for the Plaintiff in this Action, and an Obſervation that the Judgment was arreſted. Ro. Ent. 15. Hern 143.

The like againſt an Attorney who made a Default, whereby there was a Judgment againſt the Plaintiff. 2 Inſt. Cl. 184.

The like where there was an Outlawry after Judgment. Rob. Ent. 98.

Againſt an Attorney who tore and obliterated a Bill delivered to him, whereby the Plaintiff could not recover his Debt. Cl. Aſſ. 269. Aſh. 16.

Againſt a Chief Clerk of the King's Bench, who appear'd for the Plaintiff upon a Latitat without a Warrant, whereupon there was a Declaration, and Judgment. Bro. Red. 12. 1 Brownl. 195.

Againſt an Attorney who took Fees for entring ſix Iſſues upon Record, who entered but five. 1 Brown. 33.

Againſt an Attorney, who cauſed the Plaintiff to be taken in Execution at the Suit of T. without his Conſent, and knowing the Plaintiff to have a Releaſe. 1 Brown. 78.

Againſt an Attorney who recovered againſt the Plaintiff at the Suit of H. and ſued out a Fi. fa. thereon, after an Agreement made, by the Plaintiff and H. 1 Brown. 85.

Againſt an Attorney, who in Conſideration that the Plaintiff would give him a Warrant of Attorney to confeſs Judgment, undertook that the Plaintiff ſhould be acquitted, whereas he was taken into Cuſtody thereupon by a Latitat. Tho. 21.

Againſt an Attorney who counterfeited a Writ of Latitat, whereupon the Plaintiff was taken and impriſoned. Tho. 31.

By the Sheriff againſt an Attorney, who counterfeitted a Warrant upon a Writ of Capias. Bro. Red. 50.

Againſt an Attorney who procured a Judgment to be ſigned upon a Poſtea, and ſued out a Writ of Fieri facias againſt the Plaintiff before the Time expired; that the Plaintiff ſhould ſhew Cauſe why Judgment ſhould not be given. Tho. 43.

Againſt an Attorney of the Sheriffs Court of London, who did not proſecute a Plaint againſt J. at the Suit of the Plaintiff, ſo for want of a Declaration J. was diſcharged. Vid. 16.

The like againſt an Attorney, by which the Defendant recovered upon a Non-proſs againſt the Plaintiff. Cl. Aſſ. 278.

Againſt an Attorney who prayed an Imparlance to Debt upon a Bond, without entring the Condition for the Performance of Covenants, whereby the Plaintiff was not admitted to plead Covenants perform'd. Rob. Ent. 59. Hern 197.

Againſt an Attorney who ſued out an Exigent in Debt, and delivered no Proclamations to the Sheriff. Vid. 63. Hern 200.

Againſt an Attorney who took the Plaintiff in Execution upon a Judgment on a Non-proſs after a Releaſe ſealed to him by the Defendant in the Action. Bro. Red. 65.

Againſt an Attorney for not paying a Fine in Treſpaſs, and not ſuing out a Writ of Superſedeas to an Exigent, being retained for that Purpoſe. 1 Bro. 33.

Againſt an Attorney, who undertook to deliver to the Plaintiff a Fieri facias upon a Judgment acknowledg'd by a Warrant of Attorney by the Plaintiff's Debtor, and had not done it. Re. Dec. 33.

Againſt a Clerk of an Office, who unduly obtained Judgment againſt one H. B. who afterwards died Inteſtate, and thereupon had Letters of Adminiſtration of the Goods of the ſaid H. B. and pleaded that Judgment as a true Judgment in Bar to the Plaintiff, by means whereof he was defeated of his Debt. Red. Dec. 80.

For an Attorney againſt an Attorney for an Arreſt and Impriſonment upon a Writ of Privilege, and procuring the Plaintiff to be arreſted at the Suits of others, when there was no Cauſe of Action. Ro. Ent. 90.

Where one H. H. being indebted to the Plaintiff in 86 l. and the ſaid H. being ſeiſed in Fee of Lands to the Value of 300 l. and the Plaintiff having ſued H. for his Debt, the Defendant and H. ſet up a fraudulent Conveyance to deprive the Plaintiff of his Debt. Re. Dec. 85, 86.

Againſt an Attorney who was retained for a Tenant in Dower, for making a Default after an Imparlance. Raſt. Ent. 2. Vet. Ent. 51.

Againſt an Attorney, who delivered up a Bond to the Obligor, which was given him by the Obligee to ſue upon. Latch 122.

Againſt an Attorney in an Hundred Court, who undertook to Eſſoin for the Plaintiff in ſeveral Actions of Debt, whereupon he had a Day given him to wage his Law, and had not Eſſoin'd; whereupon Judgment was given againſt the Plaintiff. Reg. 116.

Againſt an Attorney for a Plea of Land who by Colluſion between him and the Tenant, made Default at the Day given by the Court, whereby the Plaintiff loſt his Land. Reg. 113.

The like where he acknowledged the Action in a Quare Impedit. Reg. 116.

Againſt an Attorney who appeared for the Plaintiff, without a Warrant from the Plaintiff, to an Original without Proceſs; whereupon there was an Imparlance, a Judgment upon a non ſum Informatus, a Scire facias, an Execution by Default on a Ca. Sa. 3 Brownl. 98.

Againſt an Attorney, who upon Receipt of the principal Debt and Damages the next Term acknowledg'd Satisfaction upon Record. 3 Brownl. 63.

Againſt Sheriffs and other Officers.

Againſt the Bailiff of a Liberty, who had not returned the Writ after making the Arreſt. 1 Bro. 42. Ro. Ent. 87.

Againſt the Bailiff of a Liberty, who executed a Fieri Facias, and yet returned nulla bona. Vid. 6.

Againſt the Mayor and Commonalty of the City of C. for a falſe Return upon a Mandamus, to reſtore an Alderman to his Precedency, where the Writ and Return is recited. Vid. 1.

The like againſt the Maſter and Fellows of a College, and for a ſcandalous and falſe Return of a Mandamus. Vid. 1.

Againſt the Steward of a Hundred, who cauſed Cattle to be taken out of his Cuſtody by a Replevin, without having any Pledges for his Proſecution found and returned. Bro. Red. 25.

Againſt a Bailiff of an Inferiour Court, who withdrew himſelf when an Inquiſition ought to have been taken after an Attachment for Goods in Debt, whereby the Action was diſcontinued, and the Goods deliver'd, the Debt not being ſatisfied. Bro. Red. 73. Reg. 99.

Againſt a Sheriff's Bailiff, who refuſed to take good Bail for the Plaintiff upon an Arreſt. Bro. Red. 63.

Againſt a Bailiff who returned to the Sheriff, that the Plaintiff made a Reſcue, whereas there was no Reſcue. Cl. Man. 182.

Againſt an Eſcheator for not taking an Inquiſition by a Jury, but returning the Writ of his own Head into the Court of Chancery, whereby the Plaintiff was removed from the Poſſeſſion of a Manor demiſed to him by a Guardian of an Heir. Reg. 115.

Againſt a Chirographer of the Common Pleas, who had ill indorſed the Proclamations of a Fine, whereby the Plaintiff loſt his Lands upon a Formedon. Co. Ent. 15.

Againſt a Biſhop for not admitting the Plaintiff upon a Judgment in Quare Impedit. Hern. 176.

Againſt a Sheriff for not arreſting a Perſon upon Meſne Proceſs. Lill. Ent. 60.

Againſt a Sheriff for taking inſufficient Bail in Replevin. Lill. Ent. 37.

Againſt the Bailiff of a Hundred, who neglected to arreſt a Perſon Preſent with him, by a Warrant on an Alias Capias. 3 Brownl. 40.

Againſt the Sheriff of a City for a Contempt, in not proceeding upon a Plaint in the City-Court, after three Writs of Procedendo delivered to him. Raſt. Ent. 83.

Againſt the Clerk of the Errors, for extorting Fees upon an Outlawry after Judgment. Ro. Ent. 90.

Againſt a Filazer of the Common Pleas, for ſuing out a Writ of Entry upon a Diſeiſin of Land held in antient Demeſne. Bro. Red. 53.

Againſt the Deputy of the Allnages, who deceitfully and knowingly fix'd upon a Piece of Cloth the Plaintiff's Seal, called a Kerſey Seal, in the Place of a Seal called a Half-Cloth, by which the Cloth was forfeited to the King. Vid. 51.

For the late Sheriff, againſt the Bailiff of a Hundred, who by the Plaintiff's Warrant, levied Money payable to the King's Exchequer, and did not pay it to the Plaintiff. Ro. Ent. 13.

Againſt Sheriffs and other Officers for Eſcapes.

Againſt the Sheriff upon a Capias Utlagatum before Judgment. 1 Brown. 18. Bro. Red. 33.

The like after a Declaration, and before Judgment. 2 Mo. Int. 96. 1 Brownl. 227. 3 Brownl. 39, 94. Hern 74. Aſh 32. The like after Judgment. 2 Mo. Int. 98. 2 Inſt. Cl. 189

The like where Languidus in Priſona was return'd. Ro. Int. 9. Hern 167.

For an Eſcape upon a Ca. Sa. on an Outlawry after Judgment. Ro. Ent. 100. 3 Brownl. 89.

The like againſt the Sheriff on a Meſne Proceſs. 3 Lev. Rep. 42, 45. Hern 129. Lill. Ent. 60.

Againſt the Sheriff of Middleſex, upon an Eſcape from an Arreſt by a Bill of Middleſex. Tho. 31. Han. 18. Ub. 47.

The like againſt the Sheriff upon a Latitat. Ro. Ent. 303. The like againſt the late Sheriff. Ib.

The like upon a Ca. Sa. after a Recovery in Aſſault. Id. 305.

Againſt the Sheriff for an Eſcape of one committed on an Excommunicato Capiendo. Lill. Ent. 87.

Againſt the Under-Sheriff where a Ca. Sa. iſſued, and the Plaintiff was thereupon taken, and in Cuſtody of the Defendant for 29 l. 12 s. Whereupon, in Conſideration that the Plaintiff would pay the 29 l. 12 s. to the Defendant, he promiſed to diſcharge the Plaintiff out of Priſon, and to repay that Money to the Plaintiff, upon diſcharging the Writ. Re. Decl. 25.

Againſt the Sheriff for inſufficient Security upon an Arreſt on a Bill of Middleſex. 2 Saund. 51.

The like, and a Cepi Corpus returned by the Sheriff. 2 Saund. 150.

Againſt the Sheriffs of London, for an Eſcape upon a Proceſs out of the Mayor's Court. 1 Brown. 49. Hern 129.

The like upon a Plaint levied in the Compter. Ro. Ent. 298, 308.

The like upon an Arreſt and Impriſonment, in the Time of the former Sheriff, who going out of his Office, delivered the Priſoners to the Cuſtody of the Defendant. Vid. 15.

Againſt the Sheriff for an Eſcape upon an Attachment of Privilege. Cl. Aſſ. 261. Hern 128.

Againſt the Bailiff of a Liberty upon an Eſcape, reciting the whole Judgment thereupon. Ro. Ent. 311.

For the Marſhal of the King's Bench, againſt the Warden of the Fleet, for an Eſcape of one arreſted by the Bailiff of the Liberty of Weſtminſter upon a Ca. Sa. and committed to the Fleet in Execution, by a Judge of the Common Pleas by a Habeas Corpus. 2 Brown. 13.

Againſt the Keeper of the Priſon of Ludgate, upon an Eſcape of a Bankrupt committed to him by the Commiſſioners. Ro. Fnt. 82. Hern 184.

Againſt a Bailiff of a Liberty for an Eſcape of one arreſted upon a Capias in Debt at the Suit of the Plaintiff. Re. Decl. 89.

The like againſt an Attorney being Bailiff of a Franchiſe. Cl. Aſſ. 280.

The like upon a Bill of Middleſex. Vid. 40. Ro. Ent. 299.

The like upon a Ca. Sa. after two Sci. fa. returned. Ro. Ent. 309.

Againſt the Warden of the Fleet upon an Eſcape. Re. Dec. 93.

Againſt the Marſhal of the King's Bench, where the Priſoner by a Habeas Corpus, was committed to the Fleet, and afterward by another Writ committed to the Marſhal. Ro. Ent. 306.

Againſt the Deputy Marſhal for an Eſcape. Ro. Ent. 300.

Againſt the Serjeant at Mace for an Eſcape of one arreſted upon a Plaint levied in the Counter, and thereupon the Cuſtom of the City is ſet forth. Bro. Met. 21.

For an Eſcape upon a Statute-Merchant. Reg. 98.

The like upon a Capias ad Computandum. Aſh. 13.

Againſt Sheriffs and other Officers for a falſe Return.

Againſt the Bailiff of a Liberty for an Eſcape, and falſly returning Non eſt Inventus after an Arreſt actually made. Bro. Red. 52.

Againſt the Sheriff, who neglected to execute a Ca. Sa. upon one then being preſent, and falſly returned Non eſt Inventus. Tho. 88. 3 Brownl. 35. Aſh. 57.

The like upon a Statute-Staple. Ro. Ent. 9. Hern 167.

The like upon a Special Capias utlagatum, and returning nulla bona. 2 Vent. 84. Ub. 123.

Againſt the Sheriff for a falſe Return upon a Sci. fa. that the Defendant being an Executor, had waſted the Goods. Ro. Rnt. 24. 59. Bro. Red. 38.

The like for an Adminiſtrator. Ro. Ent. 61. Bro. Red. 37. 2 Inſt. Cl. 186.

Againſt the Sheriff, who upon a Fieri facias returned, that he had taken Goods to the Value of the Debt which remained unſold, and had not returned a Venditioni ponas delivered to him, but converted the Money to his own Uſe. Bro. Red. 36. 1 Brownl. 233.

The like againſt the Bailiff of a Liberty, who executed a Fieri facias, and returned nulla bona. Vid. 6. Lill. Ent. 40.

Againſt the Sheriff who executed a Writ of Seiſin and Elegit in Waſte, after a Superſedeas, upon a Writ of Error allowed and delivered to him. Ro. Ent. 47. Hern 213.

Againſt a Biſhop for a falſe Return upon a Fi. fa. 1 Sid. 279.

For Sheriffs and other Officers.

For a Sheriff againſt one taken in Execution, who in Conſideration that the Plaintiff would permit him to go at large with two Servants, promiſed to return a Priſoner within the Day. Ro. Ent. 96.

By a Gaoler againſt a Priſoner for breaking the Gaol. 2 Mo. Ent. 95.

Vid. Title againſt Officers.

Vid. Title againſt Attornies.

For a Sheriff againſt the Gaol-keeper, for permitting Priſoners to eſcape. Reg. 110.

Againſt a Reſcuer upon a Non Omittas Ca. Sa. Hern 68.

For a Gaol-keeper againſt one committed by Auditors, for the Arrears of an Account who eſcaped, whereby the Plaintiff was obliged to pay the Money. Fitz. N. B. 95. 130.

For the late Sheriff againſt a Bailiff of a Hundred, who by the Plaintiff's Warrant had levied Monies payable into the Exchequer, and had not paid it to the Plaintiff. Hern 165. Ro. Ent. 13.

For a Sheriff againſt an Attorney, who had counterfeited a Warrant upon a Writ of Capias. Bro. Red. 50.

For Injuries to Franchiſes.

For a Guardian and Bailiff of a Liberty of P. who by Letters Patent from the Queen Conſort, had the Execution and Return of Writs within the Liberty againſt one who arreſted a Man within that Liberty. Tho. 42.

The like for a Lord of a Hundred againſt the Sheriff's Bailiff, upon a Title ſpecially ſhewn forth in the Pleadings. Wi. Ent. 83.

The like for a Lord of ſeven Hundreds, againſt a Sheriff upon ſeveral Breeches. Vid. 55.

For the Mayor and Citizens of York, who had the Execution and Return of Writs within the City by a Preſcription againſt the Sheriff's Bailiff, who arreſted a Man within the Mayor's Liberty, and impriſoned him in the Priſon of the Church. Bro. Red. 47. 1 Brownl. 154.

The like for a Biſhop by a Preſcription. Bro. Red. 49. Brev. 124. Hern. 224. Aſh. 34.

For a Lord of a Manor, who had a Court of View and Frank-pledge, againſt one who held another Court of View of Frank-pledge within the ſame Vill by another Name. Ro. Ent. 88. Ra. En. 425.

For a Plaintiff ſeiſed of a Paſſage over a Water againſt the Defendant, who carried Perſons croſs the Water in his Boat. Ro. Ent. 51. Pl. gen. 18.

For erecting a new Market, by which the Market of the Plaintiff was damnified. 2 Saund. 172. The like of a Fair. Lill. Ent. 30.

For the Lord of a Barony, who had the Execution and Return of Writs within that Barony by Preſcription, againſt one who arreſted a Man within that Barony. 1 Brown. 70. Hern 103, 225.

For the Lord of a Manor, who had a Court-Baron every three Weeks, for obſtructing his Steward and Tenants from holding a Court, by threatning them of their Lives. Ub. 238.

Where the Plaintiff by Preſcription had the Execution and Return of Writs within an Honour, and the Defendant took Cattle in the Name of a Diſtreſs within the Honour, and drove and impounded them out of the Honour. Reg. 104.

For Illegal Proſecutions.

For arreſting the Plaintiff in a City-Court without any Cauſe of Action. 1 Brown. 38.

The like where the Court had no Juriſdiction. Clift 35. Aſh. 4.

The like founded upon the Cuſtom of the Realm. Id. 35.

The like, and detaining the Plaintiff in Priſon till he found Bail. Bro. Red. 61. Clift 34.

The like upon Proceſs out of the King's Bench. Bro. Met. 25.

The like upon a Capias out of the Common Pleas, and Proceſs out of an Inferiour Court at the Suit of the Defendant, without any Cauſe of Action. Tho. 70.

The like upon a Capias out of the Common Pleas, and an Acetiam at the Suit of the Defendant. Bro. Red. 50.

The like upon a Bill of Middleſex, at the Suit of the Defendant and others. Vid. 36.

For an undue Proſecution in the Court of the Principality of Wales. Ro. Ent. 16.

For attaching the Plaintiff's Goods at the Suit of R. without his Conſent. Han. 53.

For that the Plaintiff was twice arreſted againſt the Defendant's own Undertaking to the Contrary. Cl. Aſſ. 230.

By an Attorney againſt another, who drew him into a Suit before Commiſſioners concerning Cauſes Eccleſiaſtical, and for the undue Exerciſe of his Office of an Attorney. Cl. Aſſ. 255.

The like for ſuing the Plaintiff in the Spiritual Court without a Cauſe. Clift 34.

For that the Defendant cauſed the Plaintiff to be arreſted in London for Scandal. Cl. Aſſ. 213.

For that the Defendant maliciouſly ſued out a Writ of Ca. Sa. in the Name of another without a Warrant. Bro. Red. 47.

For Pronouncing the Plaintiff to be excommunicated without a reaſonable Cauſe. 2 Brown. 20. Tho. 50.

For Proſecuting the Plaintiff upon a Sheriff's Bond without a Cauſe. Clift 33.

For ſuing in the Court of Admiralty. Ra. Ent. 23, 24. Dy. 159.

For ſuing in the Spiritual Court after a Prohibition. Fitz. Nat. Brev. 92.

For executing a Writ after a Writ of Error allowed. Hern 233.

In Actions for Reſcues.

Againſt a Reſcuer, who reſcued Goods taken in the Name of a Diſtreſs for Rent in Arrear. Ro. Ent. 12. Lill. Ent. 378, 379.

The like of a Heifer taken for a Relief. Bro. Red. 42.

Againſt one who reſcued a Priſoner taken upon a Latitat, at the Suit of the Plaintiff. Bro. Red. 48, 49. Mod. Int. 23. 1 Brownl. 255. 3 Brownl. 90.

The like of one taken upon a Capias in Debt. Han. 32. 3 Brownl. 42.

The like upon a Capias Utlagatum, Ro. Ent. 21. Hern 241.

The like upon a Bill of Middleſex, ſued out upon a Recognizance, acknowledged before the Chief Juſtice of the Common Pleas. Han. 47.

The like upon a Writ of Rebellion in Chancery, upon an Execution of a Decree. Han. 8.

Againſt one, who together with others, reſcued Sheep taken Damage-fezant. Bro. Red. 59.

For a Sheriff againſt a Reſcuer upon a Non omittas Ca. Sa. Hern 68.

Againſt Doctors, Apothecaries and Surgeons, for Misbehaviour in their Profeſſions.

That the Defendant pretending himſelf to be a Skilful Surgeon for Money paid, and to be paid, undertook to Cure the Plaintiff with a Diſeaſe in his Noſe, call'd Noli me tangere, which he had not done; but being unſkilful, applied ill Medicines, whereby the Noſe became corroded and putrified. Bro. Red. 35. 2 Inſt. Cl. 194. 1 Brownl. 232. Hern 135.

That the Defendant for Money in Hand paid, undertook to cure the Plaintiff of a Diſeaſe called the Cholick; and the Defendant gave the Plaintiff an unwholſome Medicine, whereby the Plaintiff was confined to his Bed, and remained in a languiſhing Condition for five Weeks. Bro. Va. Me. 9.

That the Defendant for 40l. whereof 20l. was paid, undertook to cure the Plaintiff's Son's Foot; which by the Defendant's Negligence became uncurable. Bro. Red. 59. Cl. Aſſ. 259.

That the Defendant undertook to cure the Plaintiff's Horſe of a Diſeaſe in his Foot, which he ſo indiſcreetly handled, that the Horſe died. Cl. Aſſ. 259.

Others for unſkilful Medicines applied to Horſes. Dig. 204. 43 E. 3. 33. Ra. Ent. 463. Reg. 110. Aſh. 12. Kit. 179. Theſ. 90.

That the Defendant pretending himſelf to be ſkilful, for Money paid, and to be paid, undertook to cure the Plaintiff with a Diſeaſe of the Stone, and an Excoriation in the Bladder, which he had not done, but had applied unwholeſome Medicines not being a licenſed Phyſician or Surgeon. Hern 135.

Where the Defendant undertook to cure the Plaintiff, but applied unwholeſome Medicines. Reg. 112.

The like for undertaking to cure a broken Arm, which by the Defendant's Negligence became crooked. Reg. 105. Aſh. 15.

The like for undertaking to cure the Plaintiff's Eye, which he by the Negligence of the Defendant loſt. Reg. 105. Ra. Ent. 463.

Where the Defendant for Money paid undertook to cure the Plaintiff of a Hurt in his Leg, who was ſo negligent in his endeavouring to cure it, and ſo inartificially cut the Nerves and Veins, that he became Lame in his Leg. Ra. Ent. 465. Vet. Ent. 49.

For an Husband and Wife, where the Wife was ſick of the Cholick, and went to the Defendant, who unſkilfully told her that ſhe had three Impoſthumes in her Body, and undertook to cure her within ten Days, but gave her unwholſome Medicines, whereby the Wife within ten Hours was confined to her Bed, and there remained in great Danger of her Life for five Weeks. Ra. Ent. 463.

Declarations againſt Tradeſmen founded upon the Cuſtom of the Realm.

Againſt a Carrier for loſing Goods which he had promiſed to deliver. Wi. Ent. 28. Cl. Aſſ. 260. Bro. Red. 12, 16. 2 Inſt. Cl. 180, 183. Tho. 34. 2 Vent. 75. 2 Mo. Int. 91.

The like of Letters to be carried. 1 Brown. 54.

Againſt a common Carrier for doing Damage to the Goods. 2 Mod. Int. 90, 91.

Againſt a common Waterman for being ſo negligent in carrying Goods and Money that they were loſt. Vid. 37. 2 Mod. Int. 92. Clift 39.

The like againſt a Hoy-Man. Clift 38.

Againſt a Smith for laming a Horſe in ſhoeing him. 1 Brown. 35. 2 Inſt. Cl. 172.

Againſt an Innkeeper for a Horſe deliver'd to him, and his negligently keeping him ſo that he died. 1 Brown. 80. Rob. Ent. 10. 2 Inſt. Cl. 175.

Againſt an Innkeeper for his Negligence in keeping a Gelding, ſo that it was ſtole out of the Paſture by Thieves. Rob. Ent. 16, 21, 23. Bro. Red. 16. 2 Inſt. Cl. 174, 177. Thomp. 14.

Againſt a Carter who drove his Cart upon the Plaintiff's Sow, by which ſhe was killed. Cl. Man. 70.

Againſt a Letter Carrier, who carried Letters from the Poſt-Office to Gray's Inn, and had not deliver'd them according to the Superſcription. Ro. Ent. 103, 104.

Againſt an Huſbandman, who had undertaken to till and ſow Lands with Grain, and perform'd it ſo negligently, that the Lands and Grain become unfruitful. 1 Bro. 72.

Againſt a Glazier for not glazing Windows according to his Contract. Pl. gen. 20.

For careleſly driving a Coach with two Horſes, ſo that the Horſes run upon the Plaintiff, and the Defendant run over him, whereby he became lame. Bro. Red. 484.

For Diſturbance of Common.

For that the Defendant incloſed the Common, ſo that the Plaintiff could not enjoy his Common. Cl. Man. 186.

For a Cuſtomary Tenant who had Common of Paſture, in a Paſture call'd T. and B. for Sheep, Horſes and Cows, lying upon the Tenements for a whole Year; whereas the Defendant put in his Cattle upon the Common, whereby the Plaintiff could not enjoy his Common. Wi. Ent. 49. 9 Co. 112. Hern 117.

That the Plaintiff ſeiſed of a Meſſuage and Lands, had Common of Paſture in L. for all Cattle Levant, &c. for the whole Year, and the Defendant incloſed forty Acres in the Common for Coney-Burrows, and kept Conies. The like for all commonable Cattle in a Wood, and the Defendant ſo incloſed the Wood, that the Plaintiff could not make uſe of his Common. Wi. Ent. 42, 76. 2 Inſtr. Cl. 241. Hern 125.

For Right of Common for three Cows, &c. and for a Foot-way. 2 Mo. Int. 85.

That the Plaintiff ſeiſed of a Meſſuage and Lands, had Common for ſuch Cattle in ſuch a Place every Year, when the Field ſhould be ſown, then after the Corn was carry'd away until the Field ſhould be reſown, and through the whole Year, when the Field ſhould lie fallow; and the Defendant with Carts, &c. ſubverted the Common. 1 Brown. 47.

The like where the Plaintiff had Common for all great Cattle call'd Rother Beaſts Levant, &c. in ſuch a Waſte throughout the whole Year; and the Defendant erected Hedges and Ditches upon the Common, and hinder'd the Plaintiff from his Common. Tho. 33.

Where the Plaintiff ſeiſed of a Meſſuage, &c. had Common for all Cattle in B. Fenn throughout the whole Year; and the Defendant put his Cattle into the Common. Tho. 40.

The Plaintiff ſeiſed of a Meſſuage had Common for all commonable Cattle, and the Defendant ſurcharg'd the Paſture, with an Intention to obſtruct the Plaintiff of his Common. Ro. Ent. 42.

The Plaintiff ſeiſed of a Foldage, and the Liberty of a Sheep-courſe in a Cloſe called N. for 600 Sheep, when the Cloſe ſhould be unſown; and the Defendant incloſed the Cloſe with Hedges and Ditches, ſo that the Plaintiff could not enjoy his Foldage. Wi. Ent. 71, 91.

That A. B. ſeiſed of a Manor, &c. had the Liberty of a Foldage, and a Sheep-courſe, in the Cuſtomary Cloſes of the Defendant, for Sheep not exceeding the Number of 300 from ſuch a Feaſt to ſuch a Feaſt every Year, when the Cloſes ſhould not be ſown with Grain, leaſed the Premiſes to the Plaintiff; and the Defendant drove the Sheep from the Paſture, ſo that one of them were loſt, and the Reſt were damaged; and that he likewiſe incloſed Part of the Common with Hedges and Ditches. Bro. Red. 63. Co. Ent. 14.

For an Aſſignee of a Term, who ought to have Common of Paſture for 300 Sheep and one Ram every Day throughout the whole Year; and the Defendant drove out the Plaintiff's Sheep with Dogs, and would not permit the Plaintiff to enjoy his Paſture there for a long Time, ſo that Part of the Plaintiff's Sheep died. Ro. Ent. 62. Hern 184.

That the Plaintiff ſeiſed of a Meſſuage and Lands, had a Foldage and Fold courſe for 500 Sheep, upon a great Waſte called, &c. throughout the whole Year; and the Defendant dug Pits, and ſo artfully covered them over with Graſs, that thereby the Plaintiff loſt the Profit of his Foldage. Wi. Ent. 91.

That the Plaintiff ſeiſed of a Meſſuage and Lands, had Common for all Cattle Levant, &c. throughout the whole Year; and the Defendant built a Houſe there, and made Burrows for Conies, and placed Hedges about the Common to make a Warren. Wi. Ent. 82.

For Leſſees who had a Right of Common in a Cloſe for all commonable Cattle for two running Years, when the Cloſe ſhould be ſown after the Grain was carried away, and every third Year throughout the whole Year when it lay fallow, Part of which the Defendant incloſed. Han. 23.

The Plaintiff ſeiſed of a Meſſuage and Lands, had Common in ſuch a Paſture for 460 Sheep Levant, &c. throughout the whole Year; and the Defendant having no Right put in his Cattle. Bro. Red. 44.

That the Plaintiff ſeiſed of a Meſſuage, &c. had Common of Eſtovers in Lands for neceſſary Firing, and the Defendant with an Intent to hinder the Plaintiff of his Common, cut down, and carried away ten Load of Furze and Heath, whereby the Plaintiff loſt the Benefit of his Common. Bro. Red. 73.

That the Plaintiff poſſeſſed of Lands, had the Liberty of Foldage of all Sheep feeding, and depaſturing in the common Fields of G. Day after Day upon his Lands; and the Defendant did not fold his Sheep upon the Plaintiff's Lands, whereby he loſt the Benefit of his Foldage. 2 Ven. 136.

For erecting a Mill whereby the Plaintiff was prejudiced in his Common. 2 Mod. Int. 88.

For Digging up the Soil, &c. to the Prejudice of the Plaintiff's Common. Id. 250.

Where the Plaintiff had Common after the Corn was reap'd in ſeven Acres, which the Defendant incloſed 3 Brownl. 96. Hern 64.

For a Leſſee of a Copyholder for digging Turf in the Common. Hern 80.

Where the Plaintiff ſeiſed of a Meſſuage and Lands, had Common for all great Cattle Levant, &c. throughout the whole Year. Hern 64.

Where the Plaintiff ſeiſed of Lands had Common, and the Defendant ſurcharged the Lands, with an Intent to hinder the Plaintiff of his Common. Hern 207.

For erecting a Houſe upon Lands where the Plaintiff had Common. 3 Brownl. 76.

Where the Plaintiff was ſeiſed of a Manor, had Common of Paſture; Whereupon the Defendant incloſed Part, and put his Cattle upon the Reſidue, whereby he ſurcharged the Common, Aſh. 60. where the Defendant dug a Clay-pit in the Common, wherein the Plaintiff's Horſe fell, and was kill'd. Hern 123.

Where the Plaintiff ſeiſed of a Meſſuage and Lands, had Common for ſuch Cattle in ſuch a Paſture throughout the whole Year; and the Defendant having no Right, put Cattle in there to depaſture. 1 Brownl. 249.

For deſtroying the Plaintiff's Common with Conies. Lill. Ent. 62.

For Diſturbance of a Way.

For a Vicar of a Church being hinder'd of a Way to carry his Tithes, by making a Ditch croſs the Way, &c. 2 Brown. 9. Reg. 105. 1 Brownl. 189.

The like for a Rector of a Church for encloſing a Field, that the Plaintiff and his Servants could not enter to carry away the Tithes. Bro. Red. 17. 1 Brownl. 180.

For the Inhabitants of a Vill being obſtructed of the Highway leading through a Parcel of Land called M. to R. by making Hedges and a Gate. Vid. 42. Ub. 120.

Where the Plaintiff by Reaſon of his Tenure, had a Way which the Defendant obſtructed by making a Wall. Vid. 65. Cl. Man. 173. Aſh. 15. Hern. 207.

That the Plaintiff ſeiſed of a Meſſuage and Lands had a Way from his Meſſuage to a River to draw Water, and to an Acre of Land Part of his Tenements for his Carriages, and to drive Cattle through three Acres of the Defendant, wherein he dug Trenches Croſs the Way. Bro. Red. 13. 1 Brownl. 197.

That the Plaintiff ſeiſed of a Meſſuage, and Cloſe of Land, had a Way for his Plows and Carts, from his own Houſe through the Lands of the Defendant to the Plaintiff's Cloſe; and the Defendant ſtop'd up the Way by building a Houſe. Bro. Red. 14. 1 Brownl. 200.

For a Leſſee for Years, where the Leſſor had a Foot-way from his own Meſſuage through the Defendant's Cloſe, as well to the Town of Wi. as to a River in the Defendant's Cloſe; and the Defendant made Ditches a-croſs a great Part of the Way, and built a Hedge, and deprived the Plaintiff of his Way. Bro. Red. 43. 2 Inſt. Cl. 238. Cl. Aſſ. 214. 1 Brownl. 247.

That the Plaintiff poſſeſſed of a Dwelling in a Meſſuage in ſuch a Vill, had a Foot-way for himſelf and Servants, from the Town of W. in and by and through a Cloſe called C. and D. to go and return to and from the Town of B. and the Defendant dug Ditches and Trenches a-croſs the Way, and obſtructed the Way with Hedges and Fences. 2 Ven. 185. Judgment for the Plaintiff. 1 Brownl. 247.

For obſtructing the Plaintiff in a Way which he claim'd by Preſcription. Id. 266. The like without a Preſcription, and the Reaſon thereof. Lill. Ent. 72.

That the Plaintiff by reaſon of his Lordſhip, had a Common in ſuch Hills at all Times in the Year, and a Way to drive Cattle thither, and back again; and the Defendant made Trenches a-croſs the Way. Ra. Ent. 616. Vet. Int. 197.

For Cuſtomary Tenants being obſtructed in the Uſe of a Way to a Market-Town, by making Hedges and Ditches a-croſs the Way in ſuch a Cloſe. Hern 73.

For Diſturbance of Offices.

Againſt an Attorney, who exerciſed the Office of Regiſter to the Archdeacon of the Archdeaconry of T. which had been granted to the Plaintiff, and receiving the Fees thereto belonging. Wi. Ent. 22. 10 Co. 50.

For the Steward of the Court of ſeveral Manors obſtructed in his Office, which had been granted to him for Life. Vid. 5. The like for a Deputy-Steward of B. Re. Decl. 138. 2 In. Cl. 208. Ra. Ent. 59. Co. 42. 1 Brownl. 192. Hern 232.

The like for an Earl, of the Office of Steward of ſeveral Manors, granted to him for Life by the Queen. Bro. Red. 483.

For the Herald at Arms for Diſturbance of his Office granted to him by the King for Life. Ro. Ent. 54. Hern 133.

The like by a Serjeant at Arms attending the Speaker of the Houſe of Commons. Vid. 38.

For an Attorney being a Town-Clerk for a Diſturbance in the Execution of his Office, and for depriving the Plaintiff of the Fees and Profits belonging to him by reaſon of his Office. 1 Bro. 59.

For interrupting a Steward in chooſing proper Officers. Cl. Aſſ. 275.

For the Deputy Clerk of the Treaſury againſt the Clerk of the Treaſury and the Cuſtos Brevium, for diſturbing the Plaintiff in receiving the Fees and Profits of an Office. Vid. 18.

Upon a Plures Mandamus for diſturbing the Plaintiff in the Exerciſe of his Office of Alderman of W. in the County of B. Re. Dec. 144.

For the Mayor, &c. of London, for Diſturbance of a Meeter of Coals. 3 Brownl. 66. Hern 102, 141. Bro. Red. 119.

For other Diſturbances.

For the Churchwardens of a Church, who uſed to cut the Trees in a Church-Yard, for repairing the Fences of the Church-Yard; and the Defendant by the Command of the Rector, cut the Trees, and carried away the Wood. Ro. Ent. 44. Hern 210.

That the Defendant demiſed a Cloſe of Paſture for a Year, and in Conſideration of 30 l. then paid, and of a Gelding of the Price of 5 l. delivered to him by the Plaintiff, the Defendant undertook that the Plaintiff ſhould have the Cloſe, without the Diſturbance of any Perſon, and the Father of the Defendant expelled the Plaintiff. Bro. Red. 16. Hern 95.

In Conſideration the Plaintiff had to Farm lett, a Meſſuage and Lands for Years under ſuch a Rent, the Defendant undertook, that the Plaintiff ſhould quietly enjoy without the Diſturbance of any Perſon; and the Plaintiff enter'd and ſowed the Lands, and one N. and the Defendant expelled the Plaintiff before the End of the Term, and before the Corn was ripe. Bro. Red. 111. Hern 95.

For a Cuſtomary Tenant againſt the Lord of a Manor and another, who cut down the Trees upon the Cuſtomary Tenements, whereby the Plaintiff had not ſufficient firing, hedging, and Wood for Repairs, according to the Cuſtom of the Manor. Bro. Red. 46. Hern 226. 1 Brownl. 252.

For Diſturbance of an Execution upon a Statute-ſtaple, by ſhutting the Doors of an Houſe againſt the Sheriff, and the Jury charg'd, ſo that they could not have a View of the Goods. Co. Ent. 12.

Where the Plaintiff ſeiſed of a Meſſuage by Preſcription repaired the Iſle of a Church, and had there Seats, and a burying Place for his Family; and the Defendant being the Vicar, obſtructed the Plaintiff from making a Grave in the Iſle, till the Plaintiff paid him 6 s. 8 d. Co. Ent. 8.

For Nuſances as to Water.

That the Plaintiff ſeiſed of a Mill, had a Water-courſe running in L. to his Mill; and the Defendant broke down a Bank, and diverted the Water from the Mill. Cl. Aſſ. 209. Han. 32. 2 Inſt. Cl. 234.

For diverting of Water from an antient Water-courſe. Cl. Man. 120. 2 Inſt. Cl. 231.

For obſtructing a Drain. Cl. Aſſ 267.

For putting Lime into the Plaintiff's Water, and deſtroying his Fiſh. Id. 274.

That the Plaintiff ſeiſed of two Meſſuages and a Garden incloſed by a Wall, contiguouſly adjoining to the King's Highway, through which a Water-courſe uſed to run to a Yard belonging to a Brewhouſe; and the Defendant with Earth and Stones obſtructed the Water-courſe nigh to the Yard, ſo that the Wall of the Houſe and Garden became rotten and decay'd, and neither the Plaintiff or his Tenant could paſs through that Way. Wi. Ent. 47. Demurrer thereto.

That the Plaintiff was poſſeſſed of a Cloſe and Meadow for a Term of Years, and the rainy Water deſcending from the Sky, uſed to run from a Hill into the King's Highway, and from thence into Plaintiff's Meadow; and the Defendant diverted the Water-courſe, and thereby the Water overflowed the Plaintiff's Cloſe. Tho. 39.

That the Plaintiff was poſſeſſed of an Antient Meſſuage adjoining to a Water-courſe, and the Defendant in throwing down great Quantities of Filth, ſtopp'd up the Water-courſe, whereby the Water ruſh'd upon, and overflowed the Meſſuage, and ſpoiled the Plaintiff's Goods. 1 Brown. 57. 2 Inſt. Cl. 235.

For that the Defendant had ſo raiſed Water into a Pool, that it overflow'd the Plaintiff's Cloſe, whereby he loſt the Profits thereof, and his Trees were ſpoil'd thereby. Tho. 42.

That the Plaintiff was ſeiſed of ten Acres of Meadow adjoining to a Rivulet to the Defendant's Mill, and the Defendant ſo raiſed up the Water into a Pool, that it overflowed the Plaintiff's Meadow. Brown. 40. 2 Int. Cl. 237. The like of two Cloſes. Rob. Ent. 44. Cook 18. Aſh. 46. 1 Brownl. 241.

That the Plaintiff ſeiſed of a Meadow called, &c. and a Rivulet uſed to run on the Eaſt Side thereof, and another Rivulet uſed to run on the South Side thereof called N. and the Rain falling into the Meadow, uſed to run into the Rivulet called N. and both the Rivulets, and the Rain uſed to run together at the End of the Meadow, and the Defendant diverted the Water-courſe, and thereby overflowed the Meadow. Vid. 64. Hern 203.

For a Cuſtomary Tenant againſt a Tanner of Tan-pits built ſo near a Rivulet, which ran near the Plaintiff's Meſſuage, that thereby the Water became corrupt and unwholſome. Rob. Ent. 66. Co. Ent. 29. Hern. 254.

That the Plaintiff was ſeiſed of a Cloſe of Paſture through which a Rivulet uſed to run, in which the Plaintiff had a Fiſhery belonging to his Cloſe; and the Defendant built an Houſe for making Allum, &c. and caſt Rubbiſh into the Rivulet whereby the Water became corrupt, and deſtroyed the Fiſh, and the Plaintiff's Cattle were not able to drink it. Tho. 26.

For not repairing of Sea-Banks againſt the Ebbing and Flowing of the Sea, which the Defendant ought to repair, whereby the Water overflowed the Plaintiff's Lands. Bro. Red. 67. 2 Inſt. Cl. 113.

For permitting a Shed lately built by the Defendant's Huſband to remain to the Prejudice of the Plaintiff's Houſe, whereby the Water ran from the Shed upon the Plaintiff's Houſe. 2 Brown. 57.

That the Plaintiff was ſeiſed of two antient and decayed fulling Mills, to which a great Part of the Water of a Rivulet uſed to run, and built a Corn-Mill inſtead of them; and the Defendant broke down Banks, and diverted the Water. 4 Co. 84.

For diverting a great Water-courſe from a Mill, by making a Whirlpool, and a Ditch a-croſs a Water-courſe. Dyer 248.

That the Plaintiff was ſeiſed of a Mill, and ten Acres of Land adjoining to a Rivulet, and the Water of the Rivulet uſed to run to the Mill; and the Defendant obſtructed the Water from running to the Mill, by making a Sluice, and thereby cauſed the Water to overflow the Meadow. 2 Brownl. 62. Hern 133.

For a Leſſee of a Mill for diverting Water, by making a Rivulet. 3 Brownl. 45.

For the Leſſee of a Mill for the Defendant's diverting Water to his own new erected Mill. Hern 82.

For the Defendant's erecting a Mill ſo near the Plaintiff's Mill, that the Water flowed back again to the Wheel of the Plaintiff's Mill, ſo that he could not grind, &c. Hern 120.

By making a Bank croſs a Water-courſe, whereby the Water overflowed the Plaintiff's Paſture thereto adjoining. Ub. 230.

That the Plaintiff being a Tenant by the Courteſy of England of a Meadow, near which a Rivulet uſed to run, the Defendant dug upon the Banks of the Meadow, whereby Part of the Meadow was overflow'd. Aſh. 56.

That the Plaintiff by reaſon of his Tenure had a ſeparate Fiſhery, and the Defendant erected a Dye-houſe, and cauſed Filth to run into the Fiſhery. Raſt. Ent. 442.

For a Leſſee of a Houſe in London, who had a leaden Pipe to convey Water from his Kitchen, through the Defendant's Yard into the Street; and the Defendant placed a Heap of Coals in his Yard near the Wall of the Meſſuage, and thereby obſtructed the Water-courſe, and decayed the Wall. Aſh. 43.

For an Aſſignee of a Term in an Houſe, a Well, and a leaden Conduit, and the Defendant fix'd a leaden Pipe to the Conduit, and diverted the Water-courſe from the Meſſuage. Aſh. 44.

For diverting an antient Water-courſe, whereby the Plaintiff loſt the Benefit of his Mill. Lill. Ent. 55.

For Obſtructing the Plaintiff's Lights.

For the Plaintiff Leſſee of a Houſe in the City of B. for darkening two antient Lights, and building a Wood-pile in a Yard, near adjoining. Ro. Ent. 7. Cl. Man. 57. Hern 140.

For ſtopping up Lights in London. Wi. Ent. 46. Cl. Man. 188. 2 Inſtr. Clerical. 244, 247. Ro. Ent. 8. Co. Ent. 200. Aſh. 49. 1 Brownl. 230.

By an Aſſignee of a Leſſee in the City of Weſtminſter. 2 Mo. Int. 87.

That the Plaintiff being Leſſee of an Houſe in London, had antient Windows in the Kitchen thereof, and the Defendant being poſſeſſed of another Houſe near adjoining to the Plaintiff's Houſe, erected a new Building near the Plaintiff's Kitchen, that in a great Meaſure it obſtructed the Light from coming into the Plaintiff's Kitchen. Vid. 28.

The like for newly erecting a Building which darkened ſeven Windows of the Plaintiff's Houſe. Bro. Red. 34. Vid. 6. Hern 98. Lill. Ent. 81, 82.

The like for erecting a new Shed, whereby the Light was obſtructed from coming into the Plaintiff's Windows and Shop. Wi. Ent. 46.

For a Cuſtomary Tenant ſeiſed of a Houſe in Stepney, wherein he had four Windows; and the Defendant being poſſeſſed of another Houſe and Yard; whereupon the Defendant had newly built two Chimnies ſo near the Plaintiff's Houſe, that they not only obſtructed his Lights, but the Rain deſcended upon the Plaintiff's Soil. Tho. 26.

That the Plaintiff being ſeiſed of a Meſſuage, and a Piece of Land adjacent, and the Defendant being poſſeſſed of a Garden adjacent, built up a Wood-pile, and a Building for Hogs. Co. Ent. 19. 9 Co. 57.

For continuing the Obſtruction of Lights. Lill. Ent. 82.

For Erections, or the Continuance thereof; whereby the Plaintiff is endamaged.

For permitting a Shed lately erected by the Defendant's Husband to remain and continue to the Annoyance of the Plaintiff's Houſe, by the Rain falling from the ſaid Shed upon the Plaintiff's Houſe. 1 Brown. 57.

That whereas the Plaintiff was ſeiſed of an Houſe before the Fire of London, and which was thereby burnt down, the Defendant was poſſeſſed of another Houſe near adjoining; and that the Defendant placed Pieces of Timber a-croſs in ſuch a Manner, that the Plaintiff was hinder'd in re-building the ſaid Houſe. Tho. 38.

For erecting a new Market near the Plaintiff's Market, whereby the Plaintiff was damnified in his Market. 2 Saund. 172.

That one S. T. was ſeized in Fee of ſuch Cloſes, and the Dean and Chapter of W. of other Cloſes, and that they, and S. T. had a Fair by Preſcription, for the ſelling of Sheep there; That the Plaintiffs being poſſeſſed thereof, the Defendant built other Pens contiguous, to the Prejudice of the Plaintiffs Fair. Lill. Ent. 30.

That the Plaintiff being a Leſſee of an Houſe in London which he intended to raiſe higher; and the Defendant built a Houſe adjacent; ſo over-hanging the Plaintiff's Houſe, that he was not only hinder'd in building it higher, but it darkened his Lights. 3 Brownl. 46. Hern 197.

For erecting a Mill to the Damage of the Plaintiff's Mill. Ra. Ent. 9.

That the Plaintiff being ſeiſed of a Meſſuage and a Curtilage, and the Defendant being ſeiſed of a Meſſuage and Curtilage near adjoining, the Defendant dug a Lime-Kiln in his Curtilage, ſo near the Plaintiff's Curtilage, that the Plaintiff's Houſe, and an Aſh-tree there growing, and a great Part of the Ground fell into the Lime-Kiln. Aſh. 47.

For not repairing, *&c.*

For a Leſſee of a Meſſuage and Lands, and the Defendant being ſeiſed of a Meſſuage and Lands, ought to make and repair the Fences between the Plaintiff's and Defendant's Meſſuage and Lands, which were out of Repair. 1 Brown. 28. Cl. Man. 185.

That the Plaintiff ſeiſed of a Cloſe, and the Defendant poſſeſſed of another Cloſe near adjoining, ought to repair the Hedges between the two Cloſes; for want whereof Strangers Cattle entered, &c. Tho. 35. Ro. Ent. 52. 1 Brown. 28, *66*.

The like for want of repairing of Walls. Bro. Red. 20, *67*, 48*6*. 2 Inſt. Cl. 115, 11*6*.

For not repairing Fences adjoining to a Common, whereby the Plaintiff's Cattle went into the Common, and from thence into the Cloſes of the Defendant, and of other Perſons, and were impounded, whereby the Plaintiff loſt the Profits and Benefit of his Cattle, and of the Common, and had expended ſeveral Sums of Money in defending Suits of Law. Bro. Red. *6*2.

For not repairing Sea Banks, whereby the Water overflowed the Plaintiff's Lands. Bro. Red. *67*.

Againſt a Farmer of a Mill, for not repairing the Banks of a Mill-Pool, ſo that the Water overflowed the Lands of the Plaintiff near adjoining. Cl. Man. 178. Re. Dec. 99.

For not repairing the Banks of a Water-courſe running to the Plaintiff's Mill, whereby the Plaintiff loſt the Profits of his Mill. Cl. Aſſ. 210.

For not repairing a Gutter between two Houſes. Cl. Aſſ. 2*6*8. Reg. 104. Aſh. 1*6*.

For not repairing a Meſſuage. Ro. Ent. 10.

For a Rector of a Church againſt the Executors of the former Rector, for not repairing the Houſes of the Rectory. Hern 13*6*.

For not incloſing and repairing Fences. Bro. Red. 48*6*. 2 Inſtr. Cl. 115, 11*6*.

For not repairing Fences whereby the Plaintiff's Cattle eſcaped through another's Land, and were impounded. Lill. Ent. *69*.

For Dilapidations brought by the Rector, againſt the Executors of the laſt Rector. Lill. Ent. 21. 1 Lut. 115.

For other Nuſances.

That the Plaintiff was Leſſee of a Kitchen in London, Part whereof was upon a Shop and an Entry of the Defendant's Houſe, ſupported by a Brick-wall, and a Wooden Poſt fixed thereon; and the Defendant threw down the Wall and the Poſt, whereby the Kitchen fell in. Vid. *6*5. Hern 204.

For making a Sink ſo near the Plaintiff's Houſe who was a Barber, that the Defendant who being a Shoemaker, therein caſt ſtinking Water, which ran into the Plaintiff's Yard. Ro. Ent. 42. Hern 180, 208.

Againſt a Tenant of a Meſſuage, who permitted ſtinking Water running from a Kitchen, to run into the Plaintiff's Cloſe, whereby his Servants and Cattle were much infected in their Bodies, and became corrupted. 1 Bro. 44.

That the Plaintiff ſeiſed of a Meſſuage and Garden, and the Defendant poſſeſſed of a Malt-houſe near adjoining, converted the Malt-houſe into a Brew-houſe, whereby the Plaintiff loſt the Pleaſure of his Houſe and Garden. Vide 13.

For erecting a Shed for melting Tallow ſo near the Plaintiff's Houſe, that the Plaintiff could not dwell in his Houſe. Vid. 11.

That the Defendant kept a Lime-Kiln, whereby the Herbs, Graſs, and Fruits of the Plaintiff's Garden were ſpoiled and ſuffocated. Cl. Man. 150.

For putting Lime into the Water, whereby the Fiſh were deſtroyed. Cl. Aſſ. 274.

For a Leſſee of a Meſſuage, Yard and Garden, againſt a Butcher, who kept a Slaughter-houſe in a Yard, and made a Gutter, wherein he caſt the Blood, Filth and Dung, which came from the Beaſts he kill'd there, and cauſed it to run into the Plaintiff's Yard and Garden. Hern 23*6*.

For a Baker a Leſſee of a Lower Room, againſt the Inhabitants of the upper Rooms, who threw down Urin and other Filth, which fell on the Plaintiff's Meal and Bread. Aſh. 47.

For a Butcher having a Shop near to the Defendant, who placed Dirt ſo near the Plaintiff's Meat, that it was endamaged by the Duſt. Aſh. 49.

That the Plaintiff ſeiſed of a Garden, incloſed with a Brick-wall, and the Defendant erected a Privy joining to the Wall, and placed ſo great a Quantity of Dirt to the Wall, that it fell down, and the Filth and Soil run into the Plaintiff's Garden. Aſh. 43.

Trover and Converſion.

Of Goods and Chattles. Vid. 2*6*5. Cl. Aſſ. 200. Wi. Ent. 31. Mo. Intr. 13. 2 Ven. *6*3. Red. Decl. 424.

For a Horſe. Vid. 8. For a Gelding. Vid. 2*66*. Cl. Aſſ. 232. For an O

Or. Wi. Ent. 32, 61. Trea. Tro. 137. For a Cow in an inferiour Court. Tre. Tro. 155. For a Silver Cup. Tho. 32. Trea. Tro. 142. Cl. Aſſ. 233. For ſeveral Pieces of Gold and Gold Rings. Re. Dec. 421. For a Diamond Ring. Idem 422. Ub. 234. For a Hawk reclaimed with Bells. Tho. 33. Ub. 239. Hern 104, 143. For Woollen Cloth, Ro. Ent. 69. Cl. Aſſ. 232. For a Gold Ring. 1 Brown. 356. For Braſil-wood taken in Spain. Ro. Ent. 451. For a Ship and Goods. Bro. Red. 69. For a Bond. 1 Brown. 356. Tre. Tro. 142. For a Mortgage. Lill. Ent. 70. For a Bill Obligatory, which the Defendant had made to the Plaintiff. 1 Brown. 355. For a Leathern Bag of Money. 1 Brown. 356. Trea. Tro. 141. For five Pounds Weight of Wool. 2 Brown. 358. For Monies. Re. Dec. 425. For Monies which the Plaintiff had craftily got from the Plaintiff's Wife at Cards. Vid. 265. Tre. Tro. 143. For a Statute-Merchant. Ub. 233. For Cattle and Chattels. Hern 122. Ra. Ent. 5. Hern 149, 251.

For an Attorney. Wi. Ent. 108. Againſt an Attorney. Ibm. 99. 1 Brown. 356. Tre. Tro. 142.

For an Infant by his Guardian. Bro. Met. 19.

For an Adminiſtrator for Monies loſt by the Inteſtate. 2 Saund. 137. 1 Brownl. Hern. 87. Tho. 32. Mo. Int. 17, 18.

For Goods loſt by the Inteſtate, and which came to the Defendant's Hands, after the Adminiſtration granted to the Plaintiff. Tre. Tro. 148. Mo. Int. 17, 18.

For a Bond loſt by the Inteſtate, and which came to the Defendant's Hands after his Deceaſe. Vid. 265.

For an Executor for Cattle loſt, and converted in the Life of the Teſtator. Vid. 264. Tho. 31. Ro. Ent. Int. 452. Hern 122. Tre. Tro. 147, 150.

For an Executor, where the Goods were loſt by the Teſtator, and came to the Defendant's Hands after the Teſtator's Death. Ro. Ent. 80. Mod. Int. 15. Tre. Tro. 145, 152. Hern 243.

That the Plaintiff Servant to an Earl, was poſſeſſed of Goods which he loſt, and they came to the Hands of the Defendant by his finding them, who ſold them; with an Averment, that by reaſon thereof he loſt his Service. Mo. Int. 14.

For ſlandering of a Title.

That the Plaintiff was ſeiſed of a Manor, would have demiſed it, and the Defendant ſaid, that the Plaintiff had no Right thereto; whereupon one S. ſued out a Commiſſion for conſealing Lands. Ro. Ent. 14. 2 Inſt. Cl. 87. Hern 141.

That the Plaintiff ſeiſed of Lands which he agreed to ſell to E. and the Defendant ſaid, that the Plaintiff's Title thereto was not good, whereby E. refuſed to proceed in the Purchaſe. 1 Brown. 70.

For ſlandering the Plaintiff's Title, whereupon there was an Inquiſition at the Suit of the Crown, ſo that the Plaintiff could not let his Manor. 2 Mo. Ent. 25. 2 Inſt. Cl. 90.

For a Son and Heir for Words of Baſtardy. Co. Ent. 28. Hern 41.

The like in the Diſinheritance of the Plaintiff of Cuſtomary Lands, and and hindring him from having the adminiſtred Goods. Co. Ent. 29.

That the Plaintiff was ſeiſed of Lands, Part of which he could have ſold by a Feoffment; and the Defendant ſaid he had an Eſtate therein by a Deed. Ub. 116.

That the Plaintiff was ſeiſed of a Manor, Part of which was a Warren of a 100 Acres, which he would have ſold; and the Defendant ſaid, that one R. had a Title to one third Part therein. Ub. 235.

That T. ſeiſed of a Manor, of ſuch a yearly Value, and clear of all Incumbrances, ſold it to the Plaintiff, who had a Diſcourſe with L. on the Part of R. about the Sale thereof; and the Defendant ſaid, that the Eſtate was imperfect, and that another Perſon had a Title, in whoſe Name the Defendant entred into the Manor. Raſt. Ent. 594.

That the Plaintiff was ſeiſed of Lands for his own Life, and the Life of others, which he was about to ſell to M. and the Defendant ſpoke ſuch Words that M. refuſed to proceed in the Purchaſe. 3 Brownl. 112.

That the Plaintiff in Right of his Wife, was ſeiſed of a Manor and Advowſon by the Feoffment of R. who at the Time of the Feoffment was ſeiſed of other Lands, whereof by the Name of all his Lands, &c. he enfeoff'd K. and others; and the Defendant ſaid that R. at the Time of the laſt Feoffment, was ſeiſed of the Manor and Advowſon; and that it paſs'd by the general Words of the Charter of Feoffment to K. and others; whereby the Plaintiff was hindered in an Exchange thereof then in Agitation. Raſt. Ent. 594.

That S. ſeiſed of ſeveral Manors and Lands, had covenanted to ſtand ſeiſed to the ſeveral Uſes to his three Daughters, one whereof was the Plaintiff's

Wife; and they had a Diſcourſe with D. about making a Leaſe to him for a Term of Years for 200 l. And the Defendont ſaid, that S. had made an Eſtate to another Daughter for 1000 Years, whereby D. refuſed to take a Leaſe. Co. Ent. 30.

That one T. G. was ſeiſed of a Manor, clearly diſcharged from any other Title worth 140 l. per Annum, and T. G. by a Deed enrolled, ſold the Manor to the Plaintiff for 3000 l. and that L. G. was about to buy the ſame for R. L. of the Plaintiff for 3000 l. and that the Defendant aſſerted, that the Plaintiff's Eſtate was imperfect by a fraudulent and ſecret Deed having been made to defraud T. G. of that Manor, whom the ſaid W. aſſerted to have the legal Eſtate. Raſt. Ent. 594.

That the Father of the Plaintiff ſeiſed of ſeveral Lands, deviſed Part to the Plaintiff in Tail, and another Part to his Wife and Children for their Lives, Remainder to the Plaintiff in Tail; which Eſtate ſo deviſed the Heir confirmed; and the Plaintiff having a Wife and Children, intended to have provided a Jointure for his Wife, and Portions for his Children; and the Plaintiff ſpoke Words to depreciate his Eſtate. Co. Ent. 35.

For impoſing Crimes upon the Plaintiff, or cauſing him to be indicted.

For charging the Plaintiff with Felony, and carrying him before a Juſtice of Peace in London, and there detaining him until he found Bail to appear at the next Seſſions of the Peace, where he was diſcharg'd by Proclamation. Ro. Ent. 339. Vid. 115. Hern 71. Ra. Ent. 12.

For one of the King's Meſſengers, for a falſe and ſcandalous Petition exhibited againſt him to the Juſtices of the Peace of the Seſſions, and by them deliver'd to the King's Privy Council. Ro. Ent. 72. Hern 153.

For a Doctor of Laws, and Official to the Biſhop of L. for a falſe and ſcandalous Petition exhibited againſt him to the Committee of Parliament. Vide 36.

The like for Printing and Publiſhing a Petition. 1 Saund. 120.

For an Attorney, for exhibiting falſe Articles againſt him in the Court of Chancery; whereupon upon the Defenrant's Oath, a Writ iſſued from the Court of King's Bench for the Plaintiff's good Behaviour, and the Plaintiff was thereupon arreſted. Ro. Ent. 75.

For charging the Plaintiff with Felony before a Juſtice of Peace. 1 Bro. 76. Hern. 157.

The like for being acceſſory to Felony. Tho. 35.

For a Counſellor at Law for a ſcandalous Libel. 2 Brown. 22.

For an Information of Perjury in the Court of King's Bench. Clift 25.

The like for an Information againſt the Plaintiff, that he riotouſly was aſſembled with others, and had unlawfully beat the Defendant. Clift 27.

For impoſing the Crime of Felony, and procuring the Plaintiff to be indicted upon the Defendant's Oath; to which the Plaintiff pleaded, and was acquitted upon a Trial. Tho. 43. Wi. Ent. 74.

The like for an Attorney. W. Ent. 74. Bro. Red. 12.

Nor charging the Plaintiff, and cauſing him to be indicted for Felony in Middleſex. 1 Bro. 3. Re. Dec. 105; 131. Clift. 29.

The like at the Aſſizes, and Ignoramus return'd. 2 Bro. 17. Wi. Ent. 104. Bro. Va. Me. 42.

The like for a Robbery. Ro. Ent. 68. 2 Mo. Int. 100. Han. 24, 30, 53. Tho. 36.

The like for a Rape. Wi. Ent. 96. Pl. gen. 48.

The like for indicting the Plaintiff for an Aſſault, and endeavouring to take away the Defendant's Wife. Clift 28.

The like for Barretry. 1 Brown. 18. Bro. Red. 20. 340.

The like for Forgery. Bro. 28.

For a Parſon indicted by the Plaintiff at the Seſſions for Sodomy, where the Bill was returned Ignoramus. 2 Brown. 21.

For indicting the Plaintiff for being a Conjurer. 2 Brown. 24.

For indicting the Plaintiff upon three Indictments. 1. For ſtopping up a Highway in an unjuſt and riotous Manner. 2. For unlawfully and forcibly entring into Lands. 3. For an unlawful and unjuſt Treſpaſs in Lands, and cutting down Fences. Clift 24.

For indicting the Plaintiff for ſtopping up a common Highway. Clift 31.

The like for an Aſſault and Affray, where Ignoramus was returned by the Grand Jury. Idem 32.

For Pronouncing the Plaintiff excommunicated without a reaſonable Cauſe. 2 Brown. 20.

For exhibiting falſe Bills againſt the Plaintiff, ſuggeſting that he had falſly inrolled Pleas in the Court of Common Pleas, and procuring the Plaintiff to be often examined thereon. Raſt. Ent. 13.

For fixing a ſcandalous Bill againſt the Plaintiff to a Church-door. Ra. Ent. 13.

Againſt Abettors in an Appeal. Ra. Ent. 43, 44.

For arreſting the Plaintiff in the Mayor's Court of Maidſtone. Lill. Ent. 23.

For Slander of Perſons.

For Scandalum Magnatum. 2 Bro. 16. Vide 61, 63, 72, 74. Cl. Man. 160. 4 Co. 13. Lill. Ent. 494.

For a Duke. Bro. Red. 21. 2 Inſt. Cl. 21.

For Words of Treaſon. Han. 29. Cl. Aſſ. 221. Pl. gen. 17. 2 Inſt. Cl. 27.

Words of Murder and Theft. Pl. gen. 37. Re Dec. 129. 2 Inſt. Cl. 29, 53. Co. Ent. 23.

Of Witchcraft. Han. 28. Cl. Man. 163. Hern 112, 122. Cl. Aſſ. 196. Clift 106, 107, 108. 2 Inſt. Cl. 33.

Of Perjury. 1 Bro. 23, 63. Bro. Vad. 44. Tho. 47. Pl. gen. 27. Cl. Aſſ. 221.

The like upon a Trial. 2 Mo. Int. 18. Ro. Ent. 94. Clift 102. 2 Inſt. Cl. 61, 63.

For Words of Theft. 2 Bro. 26. Bro. Vad. 46. 2 Mo. Int. 22. Ro. Ent. 70. Han. 16, 27, 28. Tho. 72. Re. Dec. 103, 116, 136. Cl. Aſſ. 195. 2 Inſt. Cl. 44, 49, 55. Ra. Ent. 12. Ub. 118.

Of a Rape. 2 Bro. 19. Han. 57. 2 In. Cl. 36.

Of Adultery. 2 Bro. 18.

Of Forgery. Tho. 53. Bro. Red. 72. 2 Mo. Int. 20. 2 Inſt. Cl 66.

Of Barretry. Tho. 57.

Of Words of counterfeiting Money. Tho. 54.

Of Frauds. Tho. 45. Clift 111, 112, 116. Han. 15. Cl. Man. 154. Re. Dec. 100.

Of Words of Witchcraft. 2 Mo. Int. 24. 2 Int. Cl. 53, 58,

Words of Slander in Welch. Hern 129. 1 Bro. 77. Mo. Ent. 7.

For Words, charging the Plaintiff with having the French Pox, with an Averment of the Signification of thoſe Words. 2 Bro. 6. Mo. Int. 26. 2 Inſt. Cl. 82.

For Words ſpoken to a riotous Aſſembly, that the Plaintiff's Houſe, which was a Tavern, was a Bawdy-houſe, by which the Plaintiff's Goods were ſpoiled. Vide 44.

Of Perjury, where the Defendant had proſecuted the Plaintiff for a Debt in the County Court, where the Plaintiff had waged Law, and thereupon the Defendant ſaid the Plaintiff was perjured. Ro. Ent. 45. Hern 211.

For Words, that the Plaintiff had burnt Barley. 2 Inſt. Cl. 42.

For Words ſpoken of an Officer, charging him with Cozenage in his Office. Wi. Ent. 70.

For a Judge of the Common Pleas, and Juſtice of Aſſize, where ſeveral Malefactors had committed Rents and Riots in breaking down Hedges; and the Defendant was examined for abetting them; who ſaid, that the Plaintiff gave Advice to the Tenants to throw down the Hedges. Ro. Ent. 79. Bro. Red. 19. 2 Inſt. Cl. 70. Hern 159.

For one who had been a Member of Parliament, for ſaying that he was a Papiſt and Penſioner. 2 Ven. 263.

For a Juſtice of Peace for Words of Cozenage. Tho. 46. 2 Mo. Inſt. 30.

The like for Words of Bribery. 3 Brownl. 113. Hern 114.

The like for Forgery. Tho. 48.

For Words of Injuſtice. Ro. Ent. 65. Hern 253.

For an Auditor for Words, charging him with Cozenage in taking Fees. Wi. Ent. 70.

For a Counſellour of Law againſt the Defendant, who writ and publiſhed a ſcandalous Libel againſt the Plaintiff directed to his Client. 2 Bro. 22. 1 Saund. 120.

The like for Words of Subornation of Perjury. Tho. 53.

The like For Words of Maintenance and Champerty. Han. 61. Cl. Man. 166.

The like for Words of Perjury. Re Dec. 119 Co. Ent. 26. Hern 111.

For a Doctor of Phyſick, that he had killed five Perſons in Bleeding them. 1 Bro. 21.

Of Words of a Rector of a Church, charging him with Fornication, and Incontinency. 1 Bro. 22.

The like for Words of Simony. Tho. 50. 2 Mo. Int. 82.

For Words of Bawdry. Br. R. 70.

For ſcandalous Words of a Parſon. 1 Bro. 77.

The like for Sodomy. 2 Inſt. Cl. 37.

The like for Words of Perjury. Re. Dec. 123.

The like for Words of Theft. 1 San. 241.

For Words of an Attorney of the Common Pleas, for charging him with being an Ambidexter, and deceitful in his Profeſſion. Tho. 50. 2 Mo. Int. 27. Co. Ent. 23.

The like for Words of Inſufficiency and Inability, &c. Tho. 50. 2 Mo. Int. 27.

The like for Words of Forgery. 1 Bro. 65, 79. Pl. gen. 25, 32, 35.

The like for Knavery and Theft. 1 Bro. 79. Han. 26. Hern 111.

The like for Knavery and Perjury. 2 Bro. 19. Br. R. 70.

The like for Perjury. Clift 104.

The like for Bribery. Pl. gen. 30.

For the Clerk to a Prothonotary for Words of Theft. Br. R. 51.

For an Attorney for ſcandalous Words written in Exceptions in Chancery. Br. R. 72.

For a Virgin, that ſhe had had a Baſtard. 1 Bro. 49. Cl. Man. 168. Re. Dec. 108, 110. Cl. Aſſ. 207. 2 Inſt. Cl. 78. Hern. 110. Lill. Ent. 61. Aſh. 20.

The like for Incontinency, by which ſhe loſt her Marriage. Tho. 45. Ro. Ent. 106. Bro. Va. 47. 2 Mo. Int. 29.

The like of a Widow. 1 Bro. 62.

For a Widow for Words of Inſufficiency. Han. 11.

For a Bachelor, for ſcandalous Words by which he loſt his Marriage. Tho. 57. Hern 221.

Of a Tradeſman in London for Words charging him to have been in Newgate for Felony, and ſhould be hang'd. 1 Bro. 23.

For Words, charging the Plaintiff with keeping a deceitful Shop-book. Ro. Ent. 46. Hern 212. The like For keeping falſe Weights. Hern 111.

Of a Merchant that he was a Bankrupt. 1 Bro. 63. 2 Mo. Int. 34. Vide 2 Bro. 23. 2 Int. Cl. 77.

The like of a Mercer. Ro. Ent. 77. Tho. 51, 52. Bis 56. Mo. Int. 1. Cl. Aſſ. 198. 1 Bro. 78.

The like of a Malſter. Bro. Met. 35.

The like for Words of Cozenage of a Taylor. 1 Bro. 54.

The like of a Mercer. 1 Brown. 78. Hern. 108, 158.

The like of an Innholder. Han. 15.

For a Malſter for Words of Inſufficiency. 2 Bro. 15. Br. R. 83.

The like of a Merchant. 2 Bro. 23. Br. R. 81.

The like of a Clothworker in London. 2 Inſt. Cl. 74. Aſh. 55.

For a Son and Heir for Words of Baſtardy. Tho. 58. Re. Dec. 127. 2 Mo. Int. 26. 2 Int. Cl. 93. Aſh. 66.

The like of a Daughter and Heir. 2 Bro. 19. Han. 26.

For a Deputy-Collector for razing a Figure in a Book of Aſſeſſment. Br. R. 71.

For a ſcandalous Libel written and publiſh'd. Br. R. 72. 2 Int. Cl. 24, 90, 96.

For a Goldſmith for ſcandalous Words printed and publiſhed in the Poſt-boy, whereby he loſt his Marriage. Bro. Met. 3.

Declarations for Damages done to Horſes hired or lent.

For riding a Horſe of the Plaintiff's (delivered to the Defendant to ride) in ſo furious a Manner that he was kill'd. 1 Bro. 40. 2 Inſt. Cl. 178, 179.

For a Horſe lent to the Defendant which he ſo negligently left, that the Horſe fled, and in Leaping Ditches became ſo wounded, that he was killed. Rob. Ent. 30.

In Conſideration that the Plaintiff would lend the Defendant a Mare for his Son to ride on, the Defendant promiſed that his Son ſhould not overwork her, but would redeliver her ſound, whereas ſhe was killed by being over-wrought. Bro. Red. 27.

For the Plaintiff's Mare delivered to the Defendant to till his Lands for two Days, and that the Defendant ſo exceſſively wrought her that ſhe died. Rob. Ent. 50, 51.

Declarations for other Wrongs, &c.

For cancelling a Bond delivered to be kept Safe for the Plaintiff. Ra. Ent. 7. Vet. Int. 20. Ub. 238.

For tearing the Seal off a Deed, deliver'd to the Defendant to look on. Ra. Ent. 7. Vet. Int. 163.

For a Haberdaſher againſt one who uſed too much Familiarity with his Wife, by kiſſing and toying with her, ſo that the Plaintiff became ſcandaliz'd, and hinder'd in his Buſineſs in his Shop, and injur'd as to his Houſhold Affairs. Ub. 243.

Againſt an Overſeer of the Poor, who for 4 s. 6 d. aſſeſſed upon the Plaintiff diſtrained his beſt Cow, and ſold it to another by Covin, for 53 s. 4 d. whereas the Plaintiff had ſeveral Cattle of a leſs Price, and the Defendant had not reſtored to the Plaintiff the Overplus. Hern 233.

For looſning a Veſſel faſten'd to a Poſt with a Rope, ſo that the Veſſel floated in the River, and was much damaged. 213. Ro. Ent. 47.

For enticing the Plaintiff's Apprentice away from his Service. Hern 78. Tho. 33. Vide 86. 1 Brown. 67. Vide 85. 2 Sand. 169. 2 Inſtr. Cl. 199. The like of a Servant. Cl. Man. 73, 171. Vide 85. 2 Inſtr. Cl. 201, 202. Hern 243.

The like of an Apprentice, and to play with the Defendant at unlawful Games, at which the Apprentice loſt the Plaintiff's Money. Hern 160.

Againſt an Innholder, who ſold the Plaintiff's Horſe which he had at Paſture. Ub. 231.

For a Leſſor againſt a Leſſee at will, for burning a Cottage by Negligence. Aſh. 56.

For a Tenant for Life againſt a Tenant at Will for cutting down Trees. 1 Brownl. 255. 1 Brown. 28. Ro. Ent. 77. Bro. Red. 48.

Againſt the Lord of a Manor, for cutting down Trees on the Plaintiff's Cuſtomary Lands, of which he was ſeiſed in Fee. 1 Brownl. 252.

For forging a Writing to give the Plaintiff Trouble in Lands which he had bought. Ra. Ent. 356.

For a Lord of a Manor ſeiſed of the Manor, held of antient Demeſne againſt the Defendant, who levied a Fine in a Superiour Court, of the Tenements held of the Manor, whereby the Tenements became pleadable at Common Law, to the Diſinheritance of the Plaintiff. Bro. Red. 25.

The like for Bailiffs of a Borough, and of the antient Vill of G. with a Demurrer thereto. Wi. Ent. 26.

For a Son and Heir, for forging a falſe Will tending to his Diſinheritance. 1 Brown. 25.

Againſt a Vicar of a Church, for pronouncing the Plaintiff excommunicated, and thereby hinder'd the Plaintiff from coming to Church, whereas there was no Excommunication. Tho. 59. 2 Brown. 20.

Againſt a Servant retained to ſerve the Plaintiff as a Shepherd for a Year, for departing his Service within the Year, whereby the Plaintiff loſt ten Sheep. Bro. Red. 35.

For taking and impounding Sheep in a private Place, ſo that by impounding them in a ſtrong Place Part of the Sheep died, and the Reſt were much damaged. Ro. Ent. 87.

The like for impounding Cattle in ſeveral Places. Wi. Ent. 89. 2 Inſtr. Cl. 179.

For proſecuting a Writ of Capias Utlagatum, after the Outlawry was reverſed. Bro. Red. 18.

For the Citizens of London againſt the Mayor, for refuſing a Poll at an Election of a Bridgmaſter. 2 Ven. 25.

For taking away the Boundaries of the Plaintiff's Lands, which divided them from the Lands of other People. Cl. Man. 176.

For clipping the Tails and Necks of the Plaintiff's Horſes. Cl. Man. 180.

For with-holding and detaining Evidences deliver'd to the Defendant to keep. Cl. Aſſ. 212.

By a Proprietor of a Copy of a Book, againſt one who printed it without his Conſent. Lill. Ent. 67.

The like by a Patentee. Idem 63.

Againſt the Maſter of a Hoy for ſinking the Plaintiff's Boat. Lill. Ent. 38.

Againſt a Headborough for billeting Soldiers on the Plaintiff. Lill. Ent. 21.

For keeping a Dog accuſtomed to bite Sheep, which bit the Plaintiff's Sheep, that Part of them died, and the Reſt were damaged. Ro. Ent. 77. Bro. Red. 43.

The like of a Dog accuſtomed to bite Men. 1 Brown. 29. 2 Inſt. Cl. 197, 198.

The like for biting a Horſe. Ro. Ent. 20. Hern 249.

The like for keeping a Boar that was uſed to biting. Bro. Red. 47, 73.

The like for keeping a miſchievous Heifer. Tho. 40.

Declarations in Actions upon the Caſe, for the Defendant's not doing ſomewhat he ought to do, either by the Law, or the Cuſtoms of the Kingdom, or by his Promiſe Expreſs or Implied.

For a Cuſtomary Tenant of a Mill, againſt the Occupier of Tenements, who by Cuſtom ought to grind his Grain at the Plaintiff's Mill. 1 Brown. 68. Bro. Red. 63. Hern 83.

For a Biſhop's Tenant of four Cuſtomary Mills, againſt an Inhabitant of an antient Meſſuage, where all the Inhabitants in the City of S. ought to grind their Corn at the ſaid Mills. Wi. Ent. 66.

For two Proprietors of Mills, againſt the Tenant of a Meſſuage within a Manor, where, by the Cuſtom of the Manor, every Inhabitant within that Manor ought to Grind their Corn at the ſaid Mills. 2 San. 112.

The like for a Tenant at Will of ſeven Mills in a Manor, and a Borough, againſt the Inhabitants of an antient Meſſuage within that Manor and Borough. 2 Ven. 288. an Action upon the Caſe brought by two upon a Preſcription, for not Grinding all their Corn at one of their Mills; but the Declaration ill, becauſe they had not ſaid all their Corn which they had to Grind. 2 San. 113.

Againſt a Vicar, for neglecting to read divine Service in the Chapel of a Lord of a Manor. 5 Co. 72. Ra. Ent. 2.

For not performing an Agreement as to cleaning the Court belonging to a Houſe called the Mews, and carrying away the Dung and Filth from the ſame. Re. Dec. 11.

Againſt an Attorney, who had not ſued out a Fieri Facias upon a Judgment confeſſed by a Warrant of Attorney. Re. Dec. 33.

For not paying E. D. Monies due for feeding Cattle ſold the Plaintiff by the Defendant. Cl. Aſſ. 208. Clift 65. Cl. Man. 114.

For not delivering Monies deliver'd to the Defendant by the Plaintiff, to be delivered to J. S. Cl. Aſſ. 209.

For not repairing a Meſſuage. Ro. Ent. 10.

For not paying Rent, in Conſideration of a Diſtreſs left by the Plaintiff upon the Premiſes. Bro. Red. 120. 2 Inſtr. Cl. 120, 122.

For not delivering the Poſſeſſion at the End of a Term according to a Promiſe. Clift 40. Re. Dec. 5.

For not taking away Sheep (that were ſold to the Defendant) out of the Paſture of the Vendor, according to an Agreement. Clift 65.

For not repairing a Barn according to a Promiſe upon an Exchange of the Barn of the Defendant for the Plaintiff's Barn. Clift 74.

For a Farmer of Tithes againſt an Occupier of Lands, where, by the Cuſtom of the Vill, all the Occupiers of Lands ought to carry their Tithes to a Barn, call'd the Tithe-Barn. Tho. 74.

For a Farmer of Lands, where by a Preſcription all the Farmers of ſuch a Farm, had the Liberty of a Fold-courſe within the common Fields in G. from ſuch a Day to ſuch a Day, feeding upon the Lands of the Farm; and the Defendant put in 200 Sheep there to depaſture, but did not fold them as he ought upon the Lands, whereby the Plaintiff loſt the Benefit of the Foldage. 2 Ven. 136.

For not plowing Lands according to an Agreement. Clift 63.

For not performing an Agreement about building a Houſe. 2 Saund. 347. 2 Inſtr. Cl. 106, 108, 111.

For not redelivering a Horſe left with the Defendant to depaſture. Cl. Man. 77.

Bars or Pleas.

To Actions upon Promiſes.

Non Aſſumpſit. 1 Bro. 67. 2 Bro. 9. Mo. Int. 27, 28. Han. 35, 59. Cl. Aſſ. 71. Lill. Ent. 56, 57.

Non Aſſumpſit to Part, and a Tender to the Reſt. 2 Mo. Int. 143. Replication and Iſſue. Ibid.

Non Aſſumpſit by an Executor. Bro. Vad. 75, 113.

To the firſt Promiſe Non Aſſumpſit, to the Second and third Non Aſſumpſit, within ſix Years. Bro. Vad. 74, 113.

Non Aſſumpſit within ſix Years by an Executor ſetting forth the Time of ſuing out the Original, Replication and Iſſue. 2 Mo. Int. 138. Cl. Aſſ. 115.

A ſpecial Replication, that the Plaintiff ſued out a Latitat, and that the Cauſe of Action accrued within ſix Years before. Mo. Int. 138.

An Alias Latitat ſued out, with ſeveral Continuances. Id. 140.

The Statute of Limitations pleaded at Large. Id. 142. The like, Cl. Aſſ. 181. The like, Br. R. 99. Replication thereto. Id. 104.

A Plea, alledging by Proteſtation, that he had not accounted, nor was indebted, for Plea, Non Aſſumpſit Pl. gen. 58.

To part Non Aſſumpſit, and to the Reſidue a Tender of Money brought into Court; Replication, denying the Tender. Tho. 60, 66. Br. Red. 90. The like, Cl. Aſſ. 104.

As to one Promiſe Non Aſſumpſit, and to the other that he had paid Part, and a Tender to the Reſidue brought into Court. Br. R. 90, 107, &c.

Payment as to Part, and a Tender as to the Reſidue, and the Money brought into Court. Bro. Vad. 103; Cl. Aſſ. 140.

That an Agreement was made upon a Condition, and a Traverſe of the Agreement in the Declaration; Replication maintaining the Declaration, and an Iſſue upon the Traverſe. Tho. 74.

That the Bargain made was upon a Condition, that the Plaintiff was to pay Money at ſuch a Feaſt, which he had not paid; Replication, that the Bargain was made without a Condition, and a Traverſe, that it was upon a Condition. Br. R. 90.

That the Defendant promiſed upon ſuch a Condition, and a Traverſe of the Promiſe in the Declaration, and a Replication and Iſſue upon the Promiſe in the Declaration. Ro. Ent. 97.

That the Plaintiff had diſcharged the Defendant of the Promiſe. Clift 199.

That he had left the Premiſſes in as good Repair as they were at the Time of the Agreement, and an Iſſue thereupon. Han. 41.

That he had paid the Money according to his Promiſe; Replication, that he had not paid. Mo. Int. 29. The like, 2 Bro. 6.

To a Promiſe to pay the Loſs ſuſtained by carrying away Wood; a Plea, that the Defendant offered to pay 26 s. which was a ſufficient Recompence; Replication, proteſting that he did not offer for Plea, that it was not a ſufficient Recompence. 1 Bro. 37.

To the laſt Promiſe Non Aſſumpſit, and to the firſt a Demurrer. 3 Lev. Rep. 149.

To the ſecond Promiſe Non Aſſumpſit, and to the firſt a ſpecial Plea. Id. 317.

The Defendant pleads Non Aſſumpſit to Part, and a Foreign Attachment, in London, as to the Reſidue; Replication, that thoſe Bonds attached were made in S. and not in London; Rejoinder, that one of the Bonds was made in London, and Judgment for the Plaintiff. Lev. Ent. 2.

Plea by a Releaſe to a Declaration for Lodging. Cl. Aſſ. 257.

The Defendant pleads a general Releaſe made after Verdict, and before Judgment. Bro. Vad. 115.

As to Part, that he gave a Bond, and as to the Reſidue Non Aſſumpſit. Cl. Aſſ. 101.

A Plea, confeſſing the Promiſe, but for a Defence, Payment and Acceptance after the laſt Continuance. Clift 203.

That the Plaintiff accepted a Promiſe of Payment of the Money from another Perſon, and that he diſcharg'd the Defendant therefrom; Replication proteſting, &c. for Plea, that he did not diſcharge the Defendant. Mo. Int. 30.

That the Defendant ſuch a Day, paid the Plaintiff 10 l. in full Satiſfaction of all Debts and Demands which the Plaintiff received, and a Traverſe of any Promiſe afterwards; Replication, that he had not paid, and any Promiſe afterwards; two Iſſues. Br. R. 93.

To an Indebitatus Aſſumpſit the Defendant pleads, that the Plaintiff was a Recuſant Convict, &c. with an Averment, that the Judgment and Record are in Force; the Plaintiff Demurs. Lev. Lent. 11. The like, 3 Lev. Rep. 4.

To an Indebitatus Aſſumpſit by Commiſſioners of Bankrupts; the Defendant pleads Non Aſſumpſit, to which there is an Iſſue, and thereupon a ſpecial Verdict is found. Lev. Ent. 15.

To an Aſſumpſit for Wares, and a Mutuatus for Money had and receiv'd, Non Aſſumpſit as to ſeveral Parcels of the Money, and a Tender, before the Writ purchaſed, as to the Reſt, which the Plaintiff refuſed, and that the Defendant is ſtill ready; Replication denying the Tender before the Plaintiff brought his Original; to which the Defendant Demurs. Id. 30. Br. R. 107.

The Defendant pleads Non Aſſumpſit within ſix Years; Replication, that the Monies were due and payable upon a Traffick, between the Plaintiff and the Defendant as Merchants; but ill in Aſſumpſit; otherwiſe in the Caſe of an Account. 2 San. 123.

That the Defendant had paid his Moiety of the Bargain between him and the Plaintiff, for Goods bought by them jointly according to his Promiſe; Replication that he had not paid, and an Iſſue thereupon. Re. Dec. 50.

To an Action upon ſeveral Promiſes; the Defendant pleads Payment of 5 s. in full Satiſfaction of all Promiſes, from the Beginning of the World to that Day. Bro. Vad. 93.

1. As to Money borrowed Non Aſſumpſit. 2. As to Money due for Cattle an Account ſtated. 3. As to other Money due for Cattle, &c. that they were Partners in all Bargains, &c. Id. 94. Replication and Iſſue.

To an Indebitatus Aſſumpſit for 6 l. for a Gelding; the Defendant pleads, he bought the Gelding, upon a Condition that the Plaintiff upon Requeſt, ſhould by Note under his Hand promiſe to repay the Defendant the ſaid 6 l. if any Perſon ſhould Claim a Property; and avers, that he offer'd the 6 l. and the Plaintiff refuſed to ſubſcribe a Note. Id. 95. Replication and Iſſue.

To an Aſſumpſit for Money borrowed, the Defendant pleads, that D. L. being indebted to him in 20 l. by the Plaintiff's Direction paid the ſame to E. J. the Plaintiff's Mother, &c. a Replication and a Demurrer and Judgment for the Plaintiff. Id. 97.

As to the Firſt, Second and Third Promiſes that he made them on the 10th of April, and that the Plaintiff ſealed a general Releaſe to him on the 11th, with a Traverſe of an Aſſumpſit, afterwards a Replication, that the Defendant promiſed after the 10th Day, and an Iſſue. Id. 98, 105, 111.

The Defendant, as to the 2d, 3d, 6th, and 7th Promiſes, pleads Non Aſſumpſit; and as to the 1ſt Promiſe he pleads the Statute of Gaming: And as to the 4th Promiſe, That he loſt above one hundred Pounds to the Plaintiff at Hazard: And as to the 5th Promiſe, that it is true he made ſuch Promiſe, but further that he plaid, and loſt above the Sum of one hundred Pounds not then paid by him; a Replication as to the firſt Promiſe by way of Proteſtation, that they did not play, &c. For Plea, that the Note and Bill were made for Money lent to the Defendant, and a Traverſe, that he loſt above one hundred Pounds at one Time; and as to the Fourth, that he got only 61 l. and no more; as to Fifth, that he got 61 l. and no more. Cilft 200, 201.

As to the firſt ſecond and third Promiſes, the Defendant pleads Non Aſſumpſit; and as to the other he pleads, that he paid the Money according to his Promiſe. Bro. Va. me. 99. Replication, that he had not paid, and an Iſſue, the like Replication and Iſſue. Id. 102.

To the firſt Promiſe, the Defendant confeſſeth Judgment by Non Informatus, and as to the other he pleads Non Aſſumpſit. Id. 103.

That the Plaintiff and Defendant accounted, and 10 l. was due, which he brings into Court. 2 Mo. Int. 143.

To the firſt Promiſe Non Aſſumpſit, to the Second, that the Plaintiff delivered the Goods by Agreement to the Defendant in the Name of a third Perſon, for and in Satiſfaction of Money due to him by the ſaid third Perſon. 3 Inſt. Cl. 269.

The Defendant pleads a ſpecial Letter of Licence to an Action upon the Caſe brought upon a Promiſe. Id. 273. The like, Han. 62.

Non Aſſumpſit to the Firſt, and to the Second he pleads, that he paid ſo much Money, and gave ſo many Goods in Satiſfaction. Han. 64.

Non Aſſumpſit for one Defendant, Nil dicit for the other. Cl. Aſſ. 84.

Plea of Nonage to an Aſſumpſit, for Merchandizes bought by the Defendant; Replication, that they were for neceſſary Apparel, &c. for the Defendant and his Wife; Rejoinder, that they were not for Neceſſaries, &c. Br. R. 95.

The like to an Action brought by a Taylor, and an Iſſue thereupon. Id. 104.

As to the firſt and ſecond Promiſes Non Aſſumpſit within ſix Years; as to the Third and Fourth Non Aſſumpſit generally; a Replication as to the Firſt and Second by an Original in Treſpaſs ſued forth within ſix Years &c. and that he promiſed within ſix Years next before the Original. The Defendant craves Oyer of the Original, and hath it; and pleads that the Writ will not warrant the Declaration, to which the Plaintiff demurs, and the Defendant joins in Demurrer. 2 Ven. 255.

That the Defendant paid another ſo much for the Plaintiff in full Satiſfaction, &c. Cl. Aſſ. 91.

That the Defendant paid the Money in the Declaration mentioned, before the Day of the Original, and the Plaintiff gave a Releaſe thereupon. Cl. Aſſ. 129.

One Defendant pleaded, that he together with the other Non Aſſumpſit, and the other Defendant pleaded, that the Plaintiff appointed one P. B. to receive 30 l. in full Satiſfaction of the Promiſe, &c. Id. 128.

Payment pleaded. 3 Brownl. 82. Hern 130, 135.

Payment at ſeveral Days pleaded. 3 Brownl. 56.

To an Action upon a Promiſe to become bound to the Plaintiff for Money to be paid at the End of the Year, or to pay ſo much upon Demand; a Plea, that the Defendant and another offered to ſeal and deliver a Bond, &c. which the Plaintiff refuſed to accept; Replication, that the Plaintiff requeſted the Defendant to pay him the Money which the Defendant was to pay upon Requeſt. 3 Brownl. 75.

A Plea, as to the firſt Promiſe Payment; as to the ſecond Promiſe Acceptance of another Note in Satiſfaction. Lill. Ent. 121.

In a feigned Iſſue, as to the firſt Promiſe, that the Plaintiff had paid more than he had received; as to the Second, That the Inteſtate was not indebted to the Plaintiff. Lill. Ent. 48, 66.

The Statute of the 10th of Queen Anne, pleaded in Diſcharge of the Defendant's Perſon only being a Priſoner; Replication, that he was not a true Priſoner, and a Traverſe of his Diſcharge. Lill. Ent. 108.

Non Aſſumpſit, within ſix Years from ſuing out the Original. Lill. Ent. 478. The like from ſuing out a Bill. Ibm.

Three Defendants; Two plead Non Aſſumpſit, and the Third, with the Leave of the Court pleads Non Aſſumpſit, and Bankruptcy. Lill. Ent. 106.

Pleas to Actions brought by Executors or Adminiſtrators.

That the Defendant never was Executor, and a Replication. Cl. Aſſ. 74. Han. 105.

Non Aſſumpſit within ſix Years by an Executor, with a Replication and an Iſſue. 2 Mo. Int. 138. The like, Cl. Aſſ. 95.

The Defendant pleads, that the Teſtator gave him Orders to ſell the Cloth, which he did accordingly, and paid the Money to the Teſtator in his Life-time. Bro. Va. Me. 88.

The Defendant pleads, that after the Teſtator's Death, and after the Marriage of the Plaintiff T. R. and A. his Wife, he accounted with the ſaid T. R. and was found in Arrear 40 s. which he paid, and the ſame was received in full of all Demands, &c. Replication, proteſting that he had not accounted, for Plea, that he had not paid, and an Iſſue. Id. 100.

That the Defendant, and the Inteſtate did account, and thereupon it did appear, that he did not owe one Peny to the Inteſtate; Replication, that he did not account, and an Iſſue. Id. 102.

The Defendant proteſting that he made no ſuch Promiſe, for Plea that he paid 10 l. 5 s. to the Inteſtate in his Life-time in full Satisfaction; a Replication that he had not paid it, and an Iſſue. Id. 109.

The Defendant pleads a Releaſe from the Plaintiff as one of the Executors, &c. and of Money due to the Teſtator upon a Promiſe; Replication, that it is not his Deed, and an Iſſue. Id. 116.

The Defendant pleads, that the Teſtator had accounted with him in his Life-time, and the Defendant was found in Arrear in 12 l. That afterwards he paid 10 l. and the other 40 s. he offered to the Executor. 3 Inſtr. Cl. 277. Replication, proteſting that he had not paid, nor offer'd, &c. For Plea, that he made ſuch Promiſe prout, and a Traverſe of the Account. A Rejoinder, that he accounted modo & forma, and an Iſſue. Id. 279.

That Adminiſtration never was granted to the Plaintiff. Cl. Aſſ. 117. A Replication and an Iſſue. The like, Han. 105.

That the Teſtator paid the Plaintiff 20 l. in Satisfaction of the Promiſe, &c. Id. 131.

One Executor pleaded Plene Adminiſtravit, and the other pleaded a renouncing of the Probate of the Will; and that no Effects had come to his Hands to be adminiſtred. Id. 132.

Pleas by Executors and Adminiſtrators.

Plene Adminiſtravit. 1 Bro. 17. Han. 44. Bro. Va. Me. 116.

That the Teſtator Non Aſſumpſit, a Verdict and Judgment thereon againſt the Executor. Ro. Ent. 64.

Plene Adminiſtravit by an Executor; Replication and an Iſſue. Bro. Met. 18.

Non Aſſumpſit by Executors and Adminiſtrators. Bro. Va. Me. 75.

To an Action for Sheep ſold by the Teſtator; a Plea, that the Teſtator and the Defendant had accounted; upon which the Defendant was found in Arrear 8 l. and the Defendant afterwards paid 7 l. thereof, and offered the other to the Executor; Replication, proteſting that he had not paid, nor offered, &c. for Plea maintaining the Declaration, and a Traverſe, that he the Defendant had accounted with the Teſtator, Rejoinder, that he had accounted. 1 Bro. 14.

That the Inteſtate was indebted upon a Bond to R. in 20 l. and in 30 l. to H. for Rent unpaid at the Time of his Death; and that he hath not any Goods, beſides, &c. Vid. 45.

To an Action againſt an Adminiſtrator as to Part, That the Inteſtate in his Life-time paid it; and as to the Reſidue, that the Defendant had paid the Plaintiff 10 l. in full Satisfaction of the Promiſe; Replication, that the Inteſtate had not paid the Part, and that the Defendant had not paid the Reſidue, two Iſſues. Br. R. 92.

A Plea of a Judgment in Debt in the King's Bench upon a Bond againſt the Adminiſtrator; That the Inteſtate was indebted upon three ſeparate Bonds in ſo much, and that he had not Effects beſides, &c. Replication, as to the Judgment, that the Defendant after the Judgment had paid 50 l. in full Satisfaction of the Judgment; and that the Judgment remain'd undiſcharg'd by Fraud; and as to the ſeveral Bonds, that the Defendant had paid ſeveral Sums in full Satisfaction of the Debts; and that the Bonds remained uncancelled by Fraud: Rejoinder, that the Judgment remained in its full Force, and traverſes the Fraud, and that the ſeveral Bonds were not paid or diſcharg'd, and a Traverſe of the Fraud, and an Iſſue thereon. Br. R. 55.

The Defendant pleads in Bar, that the Plaintiff brought his Action againſt the Teſtator in the Sheriff's Court, and had a Verdict there, and Judgment thereupon, &c. with an Averment of Identities, &c. Bro. Va. M. 76. Replication, that the Recovery was for 8 l. 8 s. in which the Teſtator was indebted to him for Wine, and a Traverſe of the Indentity 87. the Defendant takes an Iſſue upon the Traverſe, a Verdict and Judgment for the Plaintiff. 88.

Non Aſſumpſit infra ſex Annos, before the Day of ſuing out the Original, pleaded to an Action upon the Caſe brought by an Adminiſtrator, and that Adminiſtration was granted ſuch a Day. Lill. Ent. 471.

A Plea by an Adminiſtratrix, that her Inteſtate was indebted upon a Bond to J. S. and alſo by a Judgment recovered in the King's Bench againſt the Adminiſtratrix on a ſimple Contract by the Inteſtate, and that ſhe hath not Aſſets ultra. Lill. Ent. 59.

An Adminiſtrator pleaded Payment of Part in the Inteſtate's Lifetime, and Part by himſelf after Inteſtate's Death. Cl. Aſſ. 148. Replication, that he had not paid, and an Iſſue.

Plene Adminiſtravit, &c. Cl. Aſſ. 166, 167. Han. 195.

Nil dicit by one Executor Defendant, and the other pleads that he never was Executor. Cl. Aſſ. 174.

That he never was Executor pleaded by one, and Judgment by non Inform' by the other. Id. 177.

That he never was Executor by one, and Plene Adminiſtravit by the other. Han. 119.

To Declarations for Goods ſold and delivered.

To an Action for Wares ſold; a Plea of Nonage; a Replication, that the Wares delivered were for neceſſary Apparel, to which the Defendant rejoin'd that they were not ſold for neceſſary Apparel, and a Demurrer thereupon. 2 Bro. 29.

The like Plea, Replication, Rejoinder and Iſſue. Br. R. 93, 104. Vid. 40.

To an Action brought for Cattle ſold; The Defendant pleads that he paid for two of the Oxen, that he was ready to have paid the Plaintiff for the Cow, if he would have deliver'd her; and a Traverſe, that the Plaintiff offer'd to deliver the Cow; Replication, Proteſting, &c. For Plea, that he offer'd to deliver him the Cow. Bro. Red. 93. 3 Inſt. Cl. 270.

The Defendant pleads, that the Plaintiff accepted of a Beaver Hat in Diſcharge of the Promiſe; Replication, that he had not delivered it, and an Iſſue thereon. Bro. Va. M. 92.

Vide Bars to Actions by Executors and Adminiſtrators.

To Actions brought for the not Delivery of ſomewhat to the Plaintiff.

To an Action for not delivering Goods; a Plea of Non Aſſumpſit to Part; and as to the Reſidue that he had delivered to one C. by the Appointment of the Plaintiff; Replication; that he delivered not it by his Appointment. Pl. gen. 62.

To an Action for the not Delivery of Barley at ſuch a Feaſt; a Plea, that the Plaintiff before ſuch a Feaſt had diſcharged the Defendant from his Promiſe; Replication, that he had not diſcharged him from his Promiſe. 1 Bro. 67.

The Defendant pleads that he paid Part of the Money, and would have paid the Reſt if the Plaintiff would deliver the Cattle to him according to his Contract; Replication, proteſting that he had not paid; for Plea, that he had offered to deliver, and an Iſſue. Bro. Va. Me. 107.

The Defendant pleaded, that the Plaintiff had pawn'd the Satchel till he ſhould pay the Defendant 10 l. Cl. Aſſ. 95. Han. 109.

That the Horſe was ſo ſick that he could not deliver it to the Plaintiff. Cl. Aſſ. 102.

To Actions for Money had and received.

The Defendant confeſſed the Declaration, and pleaded that he had paid the ſeveral Sums of Money to W. to the Uſe of the Plaintiff; Replication, that he had not paid, &c. 2 Bro. 6.

To an Action brought by a Servant. The Defendant confeſſed, that the Plaintiff came into the Teſtator's Service, and there continued till ſuch a Time, during which the Teſtator had plentifully provided for the Plaintiff; and that on ſuch a Day the Plaintiff voluntarily left the Teſtator's Service; and a Traverſe, that the Plaintiff ſerved the Teſtator during the whole Time in the Declaration; a ſpecial Demurrer, and Judgment for the Plaintiff. 1 Saund. 265.

To Actions upon Promiſes relating to Lands.

To an Aſſumpſit. Bro. R. 17. Wi. Ent. 74.

Non Aſſumpſit to pay 28 l. 12 s 6 d. in Conſideration that the Defendant ſhould occupy the third Part of 223 Acres, &c. Defendant pleads Payment and Acceptance; Replication, that he had not paid, an Iſſue thereon. Bro. Va. Me. 92.

The Defendant proteſting that he made no ſuch Promiſe; for Plea, that he did pay all weekly Aſſeſſments and Payments, whatſoever chargeable upon the ſaid Tenements; Replication, that he did not pay, &c. and Iſſue. Id. 107.

To an Action for Plowing, &c. The Defendant pleads he paid 22 s. in Diſcharge of all plowing, &c. Replication, proteſting that the Defendant did not pay, for Plea, that the Plaintiff did not receive it in full Satiſfaction, and Iſſue. Id. 110.

To a Declaration, that the Defendant in Conſideration of a Surrender of a Term in the Plaintiff's Shop, would put the Plaintiff into a Shop of the Defendant's; a Plea that the Defendant offered to put the Plaintiff into a Shop, which he refuſed. 3 Inſtr. Cl. 279.

To an Action upon a Promiſe to convey Lands; a Plea, that within the Time the Plaintiff diſcharg'd the Defendant from the Promiſe; whereupon he ſold the Lands to another; Replication, that he did not diſcharge him. Ra. Ent. 685.

To Actions brought for Work and Labour.

To an Action upon an Aſſumpſit to pay 100 s. &c. the Defendant pleads, that the Plaintiff was not ready to go to the Kingdom of Scotland, but refuſed; Replication, maintaining the Declaration, and a Traverſe, that he refuſed, and an Iſſue thereupon. 1 Bro. 76.

To an Aſſumpſit by a Taylor; the Defendant pleads Nonage; Replication, that the Garments were neceſſary; Rejoinder that they were not, and Iſſue. Vid. 40. Bro. Red. 104.

To Actions brought for the Non-performance of Awards.

The Defendant confeſſeth the Submiſſion and Award, but pleads that the Plaintiff was indebted to the Defendant in 4 l. whereof the Arbitrators had Notice before they made their Award, but would make the Plaintiff no Allowance for the ſame: A Demurrer and Judgment for the Defendant for a Fault in the Declaration. 1 Saund. 30.

Non Aſſumpſit, and a Verdict for the Plaintiff. Wi. Ent. 471.

To Part the Defendant pleads, that he paid the Money according to the Purport of the Award; to the Reſidue, the Defendant pleads a Releaſe; a Replication, that the Defendant did not pay, &c. and an Iſſue thereon. Mo. Int. 57.

Pleading by way of Proteſtation, that the Arbitrators made no Award for a Defence, that no Award was delivered, or ready to be delivered according to the Submiſſion; Replication, That the Award was made, and ready to be delivered under the Hand and Seal of the Arbitrator, an Iſſue thereupon. Mo. Int. 58.

To an Action for Attornies Fees.

Non Aſſumpſit. 2 Brown. 8.

That the Defendant paid all the Sums for Proſecuting, and for the Monies expended; Replication, that he had not paid, and an Iſſue. Ro. Ent. 56.

That the Defendant was retained to be Attorney for the Plaintiff in all Actions brought againſt him; Replication, proteſting, &c. for Plea, that he did not require the Defendant to appear as Attorney for the Plaintiff; Rejoinder, that he did require him. 1 Bro. 33.

That he paid the Plaintiff 40 s. which was as much as he owed him, and a Traverſe of the Promiſe; Replication, proteſting that he had not paid; for Plea, that he promiſed modo & forma, and an Iſſue. Bro. Va. Me. 108.

To Actions brought againſt Attornies.

To an Action againſt an Attorney, that he appeared without a Warrant; the Defendant pleads, that Judgment paſſed againſt the Plaintiff by non Inform' for want of Inſtructions given by the Plaintiff. Cl. Aſſ. 289. The Plaintiff demurs, and the Defendant join'd in Demurrer, the like 3 Inſtr. Cl. 369. Replication, proteſting that he did not retain, for Plea, that he did not require the Defendant to appear; Rejoinder and Iſſue, that he did not retain, &c.

To an Action againſt an Attorney for acknowledging Satiſfaction without a Warrant; the Defendant pleaded, that the Plaintiff retain'd him to acknowledge Satiſfaction; Replication, that he did not retain, &c. and Iſſue. Id. 372.

To an Action for cancelling a Bill Obligatory; the Defendant pleads, that he delivered it as an Acquittance to be cancelled: A Replication, that he delivered it to be ſafely kept, and an Iſſue. 3 Inſtr. Cl. 375.

The Defendant pleads a Retainer by a Stranger to appear for the Plaintiff, and he thereupon appeared; and for want of Inſtructions, he pleaded that he was not inſtructed. Ro. Ent. 18, 99. Replication, that the Defendant was not retained. Ro. Ent. 20.

To Actions brought againſt Sheriffs, &c. for Eſcapes.

The Defendant pleaded a Reſcue in carrying his Priſoner to Gaol; held a good Plea, although the Reſcue was not returned. 3 Lev. Re. 44.

The Marſhal pleads freſh Purſuit to an Action for an Eſcape; Replication, Rejoinder and Iſſue. 2 Mo. Int. 145.

The Sheriff to an Action for an Eſcape, pleads the Statute of Hen. 6. concerning Sheriffs taking Bail. Id. 151, 188, 190. The like, Bro. Red. 96. and Replication, that the Bail had not ſufficient in the County where the Writ iſſued.

The Defendant proteſting that the Writ was not ſued out, and delivered, for a Plea, that the Party ſuppoſed to eſcape was not taken and arreſted, and Iſſue. 3 Inſt. Cl. 354.

The Defendant pleads, that the Juſtices of the Peace in their Quarter-Seſſions, granted a Habeas Corpus to bring the Party arreſted before them, and that Writ being return'd, the ſaid Juſtices diſcharged him. Id. 355.

The Sheriff pleaded, that N. and M. had waſted according to the Return. Id. 376.

The Defendant alledging by Proteſtation, that they did proceed upon the Writs of Procedendo with all Speed; for Defence they pleaded, that the three Writs were not, nor either of them was deliver'd as the Plaintiff declared; Replication, maintaining the Delivery, and an Iſſue thereupon. Idem Ibidem.

Pleas to Actions brought for Eſcapes.

That he did not permit him to go at large. Cl. Aſſ. 83.

The Defendant pleaded a License to diſcharge the Priſoner; Replication maintaining the Declaration, and an Iſſue. Ro. Ent. 301.

The Defendants to the Eſcape pleaded, that they took Bail for the Appearance of the Party. Ro. Ent. 309.

To an Action of Eſcape, the Defendant pleads, that the Defendant as Sheriff took ſufficient Security of the Priſoner, according to the Statute for taking Bail; and a Traverſe, that he ſuffer'd the Priſoner to eſcape, before he had taken ſuch ſufficient Security; Replication, that the Defendant before the Taking Security, had Notice that the Writ of Latitat was ſued out for the Recovery of a Debt of 80 l. Tho. 64. Bro. Red. 96. Ro. Ent. 309.

To a Declaration againſt a Bailiff of a Liberty for an Eſcape, he pleads that he had not taken, or arreſted the Party. Ro. Ent. 87.

To an Action againſt the Deputy Marſhal, brought by Husband and Wife; a Plea, that the Wife, with the Conſent of the Husband, directed the Defendant to let the Priſoner go at large. Ro. Ent. 30.

To an Action upon a Promiſe of Indemnity.

The Defendant pleads, that he became bound with the Plaintiff to the Sheriff, who in Default of the Appearance of the Plaintiff, proceeded to an Exigent againſt the Plaintiff and his Bail in the Common Pleas; and the Defendant received the Monies to give the Attorney to ſuperſede the Exigent, and for his Journies and Expences; and a Traverſe that he promiſed to Indemnify the Plaintiff with an Iſſue upon the Traverſe. Ro. Ent. 93.

That the Plaintiff was not damnified. Han. 118.

To Actions upon Promiſes relating to Marriages.

To an Aſſumpſit to pay Money in Conſideration of Marriage; a Plea, that the Plaintiff after the Promiſe made, diſcharged the Defendant by a Releaſe in Writing; Replication, that it is not his Deed; and an Iſſue. Han. 43.

The Defendant pleads, that he offered to marry the Plaintiff, which ſhe refuſed. Bro. Va. M. 90. Replication, that ſhe did not refuſe, Rejoinder and Iſſue that ſhe did.

To Actions for Meat, Drink, &c.

Non Aſſumpſit. Bro. Red. 30.

The Defendant pleads a Tender of 10 s. for Diet and Lodging, as being ſufficient for the ſame, which the Plaintiff refuſed, &c. Bro. Va. Me. 89.

The firſt Defendant confeſſeth Judgment by Nil dic'; the other pleads as to the giving 10 l. Non Aſſumpſit, and as to giving the Plaintiff A. her Diet, &c. that he gave it her Part of the Time, and was ready to have done ſo for the Remainder; but that the Plaintiff took his Wife from his Houſe, whereby he could not perform his Promiſe; Replication, proteſting that he did not take her away; for Plea that the Defendant did not give her Diet, &c. and an Iſſue. Id. 112.

A Plea, that as to ſuch a Day Non Aſſumpſit, and that afterwards the Wife abſented herſelf contrary to the Will of the Defendant; and the Defendant thereupon gave Notice to all Perſons, that he would not pay any Sum, &c. 3 Inſtr. Cl. 272. The like, Br. Br. 95. The like, 96.

A Plea to an Action upon a Promiſe of Marriage, that the Defendant promiſed upon Condition, that a Jointure was made, and a Traverſe of the Promiſe in the Declaration. Hern 228.

To Actions brought for Money due for curing Diſeaſes.

That the Plaintiff negligently managed the Wound, and by unskilfully adminiſtring Medicines, the Wound became mortified, and the Plaintiff ſaid he could do no more to it than he had done; whereupon the Defendant paid the Plaintiff 40 s. which he accepted of, and a Traverſe of his deſerving more. 3 Inſtr. Cl. 349.

To an Action for Money promiſed for the Cure of a Wound; a Plea, that the Wound was not cured by means of the Plaintiff. Hern 229.

To Actions relating to Things Mercatorial.

That the Defendant paid the Money due upon the Bill of Exchange, according to the Tenor of the Bill; a Replication, that he did not pay, &c. and an Iſſue thereupon. Tho. 66. 2 Mo. Int. 161.

To a Declaration for Money due upon a proteſted Bill of Exchange; a Plea, that the Plaintiff and Defendant ſubmitted themſelves to the Award of Arbitrators, who made their Award, that the Defendant ſhould pay the Plaintiff 700 l. which he paid, with an Averment, that the Sum in the Declaration was included in the 700 l. a Replication, that it was not Included. Han. 45.

To a like Declaration; a Plea, proteſting, &c. for Plea, that the Defendant is Heir Apparent to T. and for his better Education, he was at Paris as an Engliſh Gentleman, and a Traverſe, that he was ever a Merchant, or a Perſon trading in Merchandizes, &c. a Demurrer thereto. 2 Ven. 294.

To the like Declaration; a Plea, proteſting, &c. for Plea, that he drew the Bill of Exchange as in the Declaration, for the Uſe of C. who being indebted to the King in the ſaid 200 l. the Bill was ſeized into the King's Hands; and the Defendant, by Virtue of a Writ of Extent, paid the Money to the King in full Satisfaction of the Bill of Exchange, with proper Averments, and a ſpecial Demurrer thereto. 2 Ven. 300.

As to the ſecond Promiſe Non Aſſumpſit; as to the Firſt, that the Plaintiff indorſed the Bill to one A. B. and the Defendant paid the Money to A. B. and A. B. gave a Receipt, and an Acquittance in Writing. Clift 928.

Pleas to Actions upon Warranties.

That the Defendant did not warrant. 1 Brown. 39. Clift 939. Bro. Red. 95. with a Traverſe.

Pleas to Actions for Negligence, or for Misfeazance.

To an Action for miſuſing a Horſe in a Journey; the Defendant pleads, that the Horſe died of ſeveral Diſtempers, and a Traverſe, that the Horſe was killed by hard riding; an Iſſue upon the Traverſe. 1 Brown. 40. 3 Inſtr. Cl. 350. The like with a Traverſe of over-loading the Horſe. Ro. Ent. 51.

To an Action for unskilfully ſhaving the Plaintiff; the Defendant pleads that he did not Shave, &c. 3 Inſtr. Cl. 309.

That the Defendant did till the Ground in a Husband-like Manner, with a Traverſe of the Negligence, and an Iſſue upon the Traverſe. 1 Brown. 73. 3 Inſtr. Cl. 353.

Taking a Proteſtation the Defendant pleads, that the Goods were by a Miſfortune burnt in an Inn upon the Road, and not by Negligence of the Defendant; a ſpecial Demurrer thereto. Wi. Ent. 29.

To a Declaration for Goods loſt by a common Waterman; the Defendant pleads, that the Boat, with the Goods therein ſunk by a Tempeſt, without any Negligence of the Defendant; and a Traverſe, that they were loſt for want of Care. Vid. 3. 38. Bro. Red. 101. 2 Mo. Int. 95. 3 Inſtr. Cl. 303. Cl. Aſſ. 99.

That the Waggon laden with the Cloaths and other Things, was broken open in an Inn upon the Road, and thoſe Cloaths and other Things that were in the Waggon were feloniouſly taken away againſt the Defendant's Conſent; and a Traverſe, that he undertook to carry the Cloaths ſafely. Ro. Ent. 50. 3 Inſtr. Cl. 345. Bro. Red. 16.

That a Stranger unknown fired the Houſes joining to the Plaintiff's Houſes; and a Traverſe of a Neglect in the Defendant in guarding his Fire. 3 Inſtr. Cl. 337.

A Plea, that Goods were not burnt for want of due Care of Fire. Ibm.

A Plea, that the Defendant took proper Care of his Fire; a Replication and Iſſue upon the Want of Care. 3 Inſtr. Cl. 338.

Pleas to Actions for Diſturbances of Common.

A Plea, that the Common was the Freehold of E. and J. who gave the Defendant leave to put in his Cattle; and a Traverſe of the Preſcription. Bro. Red. 45.

That the Defendant had Common appurtenant in the Place, &c. for all commonable Cattle throughout the whole Year, as a Cuſtomary Tenant by the Cuſtom of the Manor, and in the Plaintiff's Lands by Reaſon of Vicinage. Tho. 63. 3 Inſtr. Cl. 326.

To a Declaration for chaſing the Plaintiff's Cattle; a Plea, that W. ſeiſed of the Manor whereof, &c. deviſed it to the Plaintiff for Life, who drove out the Cattle Damage-fezant; and a Traverſe of the Preſcription. Ro. Ent. 62.

A Juſtification for impoundiog an Horſe. Cl. Aſſ. 93.

To a Declaration for Surcharging of Common; a Plea, That before the Plaintiff had any thing in the Meſſuage, one J. was ſeiſed, as well of that Meſſuage and Lands, as of a Paſture in Fee, whoſe Eſtate. Ro. Ent. 42.

To a Declaration for ſurcharging Common; the Defendant pleads, that he is a Commoner, and Juſtifies putting in his Sheep. 3 Inſtr. Cl. 334.

To a Declaration for incloſing Common; a Plea, that the Plaintiff's Father gave H. leave to incloſe Part of the Common; and the Defendant as his Servant did incloſe it, and kept up the Incloſure. Wi. Ent. 77.

To the like Declaration; a Plea, That there is a Cuſtom for the Tenants in Fee to incloſe the Lands in the Fields, and to keep them ſeparate; Replication, that the Defendant did it of his own Wrong, with a Traverſe of the Cuſtom, and an Iſſue. Han. 23.

To a Declaration for a Diſturbance of Common; a Plea, that A. was ſeiſed of Lands and demiſed them to S. for Years; and the Defendant as Executor to S. plowed up the Lands, and a Traverſe of the Preſcription, and Iſſue. Tho. 65.

To a Declaration for digging Turf; a Plea by a Cuſtom, that every Inhabitant of an antient Meſſuage in G. hath uſed to dig Turf upon the Fold-courſe, and to lay the ſame upon the Graſs to dry for Fuel to be burnt in ſuch a Meſſuage, and the like Cuſtom for cutting Furze; Replication, maintaining the Declaration, and a Traverſe of the Cuſtom. Wi. Ent. 92.

A Plea, that the Plaintiff had not the Liberty of a Fold-courſe in the Fields of W. except in his own Lands. Ro. Ent. 50.

That the Defendant himſelf was ſeized of the Lands, and that he incloſed them as it is lawful for him to do; and a Traverſe of the Preſcription laid by the Plaintiff. A Replication, and an Iſſue upon the Preſcription. 3 Inſt. Cl. 317.

The Defendant juſtifies by a Grant of a free Warren made by the Dean, Knights and Canons of Windſor, and confirmed by Act of Parliament in the Reign of Ed. 4. to which the Plaintiff demurs. Wi. Ent. 77.

Not guilty as to Part, and the Defendant juſtifies the Digging as a Servant to A. upon a Preſcription to make neceſſary Repairs; Replication, that the Defendant did it of his own Wrong; a Rejoinder and Iſſue. 2 Mod. Int. 252.

The Defendant pleads a Juſtification as to the Plowing, and traverſes the Preſcription for Common. 2 Mo. Int. 155.

Pleas to Actions of Trover.

Not guilty. 1 Bro. 358. Bro. Met. 20. Wi. Ent. 33.

Not guilty as to Part, and to the Reſidue the Defendant pleads another Action, and a Recovery thereupon. Tre. Tro. 163.

The Statute of Limitations pleaded at large. Tre. Tro. 159.

That the Defendant as Bailiff of a Manor, wherein the Lord had the Goods of Waifs in the County of Middleſex, took the Cattle there waived, and a Traverſe, that he is guilty in London. Vid. 8.

That the Plaintiff licenſed a Stranger to pledge the Goods as a Security for Monies lent thereon: A Replication, that he did not Licenſe, and an Iſſue. Tho. 62. 3 Inſtr. Cl. 304.

That the Defendant took the Mare as an Eſtray, and made Proclamations, and put her to paſture; and becauſe the Plaintiff would not pay the Defendant for the Paſture, he detained the Mare till ſhe eſcaped. 3 Inſtr. Cl. 295. Replication, that the Plaintiff offered to pay 13 s. 4 d. for Amends, which the Defendant refuſed to accept; Rejoinder, proteſting that it was not ſufficient Amends; for Plea, that the Plaintiff did not tender, &c. Bro. Red. 94.

To an Action of Trover for an Horſe; the Defendant Juſtifies as Bailiff to the Preſident and Scholars of a Royal College at Cambridge. Bro. Red. 102.

A Plea, that the Defendant bought the Goods in an open Shop in London. Tho. 62. Tre. Tro. 156, 161. 1 Brown. 357. 5 Co. 83.

The like of a Gold Ring, with a Traverſe, that he knew it to be the Plaintiff's Gold Ring. Ro. Ent. 30. 3 Inſtr. Cl. 294. Ro. Ent. 24. Ro. Ent. 449.

The like with a Replication, that the Defendant bought it of his own Wrong, and a Traverſe of the Sale in Market Overt, and an Iſſue thereupon. Ro. Ent. 449. 1 Brown. 158. 2 Mo. Int. 151. 3 Inſtr. Cl. 293.

A Plea, that the Goods were pledged to the Defendant by the Plaintiff for 22 l. with Intereſt; Replication, maintaining the Declaration, and a Traverſe of the Pledging, &c. Ro. Ent. 43.

A Plea, that the Defendant as a Captain of a Man of War by the King's Command, took the Ship and Goods as a Prize, trading beyond Sea contrary to the King's Prohibition. Bro. Red. 69.

By an Executor for Gold Chains; a Plea as to Part Not guilty, and to the Reſidue, That the Defendant, Wife of the Teſtator, had the ſame in her Huſband's Life-Time for her Apparel; and an Averment, that he had Goods ſufficient to pay his Debts, beſides thoſe Gold Chains; A Replication, maintaining the Declaration, and a Traverſe, that the Goods of the Teſtator, beſides thoſe Gold Chains, were ſufficient to pay his Debts. Ro. Ent. 81.

To an Action of Trover for Cattle; a Plea, that by the Cuſtom of the City of London, live Cattle bought and ſold by Foreigners in Smithfield Market before Nine of the Clock in the Forenoon were forfeited to the Mayor; and that the Plaintiff ſold two Heifers, which the Defendant ſeiſed as a Forfeiture; and a Traverſe, that they are Guilty of a Converſion at W. &c. Tho. 380.

A Plea, that the Plaintiff demiſed to the Defendant a Cottage with the Goods; and it was agreed between the Parties, that the Defendant ſhould make uſe of the Goods for the Term, and at the End of the Term ſhould deliver them, or pay the Plaintiff a reaſonable Price for them, to be adjudged by W. who adjudged them to 5 s. which the Defendant tender'd; a Demurrer thereto. Wi. Ent. 31.

To a Declaration for a Gelding; a Plea, That the Plaintiff gave T. an Authority to ſell it, who agreed with the Defendant, that he ſhould try it, and if it was not ſound, or did not pleaſe the Defendant, he ſhould then redeliver it to T. and the Defendant found the Gelding unſound, and redelivered it to T. with an Averment, that the Gelding was in the ſame Condition; Replication maintaining the Declaration, and a Traverſe of the Agreement. 1 Brown. 356. 3 Inſtr. Cl. 298.

A Plea, that the Plaintiff obtained a Verdict and Judgment in Treſpaſs in the ſame Court for the ſame Cauſe, and the Damages were aſſeſſed to two Pence; Replication, that the two Pence Damages were not aſſeſſed for the Value, or for the Converſion of the Sheep, but only for the Taking and Driving them away; and a Traverſe, that the Taking and Driving, in that other Action was the ſame as the Converſion of the Sheep, a ſpecial Demurrer. Wi. Ent. 62, 99.

A Plea to an Action of Trover, that the Goods were bought in an open Shop in London; a Replication, maintaining the Declaration, and that the Defendant delivered the Goods to one R. who by Fraud between him and the Defendant, ſold the Goods to the Defendant, with an Intent to defraud the Plaintiff; a Rejoinder, maintaining the Bar, and a Traverſe of the Fraud, and an Iſſue thereupon. Wi. Ent. 109. 3 Inſtr. Cl. 289.

To an Action of Trover for a Boat; That the Admiralty of England, by Letters Patents, had all Wrecks upon the Sea Shore, or the Shores of Rivers within the Ebbing and Flowing of the Sea. That J. an Officer in the Court of Admiralty, took the Boat floating in the River Thames, and ſold it to the Plaintiff; a Replication, That the Defendant within a Year and a Day after the Seiſure, claimed the Boat, and an Iſſue upon the Claim. Ro. Ent. 445.

A Plea, that the Defendant levied a Plaint in the Court of Weſtminſter againſt the Plaintiff; and there was a Summons, and an Attachment thereupon awarded to the Bailiff of the Court, who attached the Goods; and the Plaintiff at the next Court made a Default, whereby the Goods became forfeited to the Lord, whereby the Bailiff ſeiſed them, and deliver'd them to the Defendant to be kept Safe until, &c. and a Traverſe, that the Plaintiff was poſſeſſed of the Goods the Day and Year ſpecified in the Declaration. Ro. Ent. 447.

To a Declaration by an Executor of an Executor; a Plea, that the Defendant ſeiſed of a Meſſuage, demiſed it to the Teſtator for a Year rendering Rent; and for the Rent unpaid, he took the Goods in the Name of a Diſtreſs, and a Traverſe of the Converſion in the Declaration; Replication, maintaining the Declaration, and Iſſue thereon. Ro. Ent. 450, 451.

That the Plaintiff acknowledged a Statute Staple to the Defendant for 200l. who thereupon ſued out a Writ of Extent, which he delivered to the Sheriff, who by Virtue thereof ſeiſed the Plaintiff's Goods, and delivered them to the Defendant in Part of Satiſfaction of the Debt. Ro. Ent. 451.

Pleas to Declarations in Actions of Deceit.

To a Declaration for acknowledging Satiſfaction upon a Judgment without a Warrant; a Plea, proteſting that the Plaintiff made him a Warrant; for Plea, that there was a Concord between the Parties. 1 Brown. 26.

That the Plaintiff Employed him to acknowledge Satiſfaction upon Record; Replication, denying the Retainer, and Iſſue thereupon. Ro. Ent. 38.

That the Defendant was imployed by the Principal in the Bond. Ro. Ent. 18.

A Plea, That the Plaintiff retained the Defendant to appear in one Action, and requeſted him to appear for the Plaintiff in all other Actions; Replication, proteſting that the Plaintiff did not retain; for Plea, that he did not retain the Defendant to appear for him in all Actions; Rejoinder, maintaining the Requeſt, and an Iſſue thereupon. Ro. Ent. 20. 1 Brown. 33.

To a Declaration for putting in Bail, and ſuffering a Judgment without a Warrant; a Plea, That the Plaintiff by a Writing retained the Defendant to put in Bail, and to ſuffer Judgment; Replication, that the Plaintiff being illiterate, ſealed a Writing as an Acquittance for the Receipt of 20l. and not to retain the Defendant; and ſo the Writing is not his Deed. Bro. Red. 91.

That one A. retained the Defendant to ſue out a Writ of Superſedeas for the Plaintiff, and to receive a Declaration; who after praying an Imparlance bid his Servant require of the Plaintiff an Anſwer, who gave him none, ſo that the Defendant for want of Inſtructions, pleaded that he was not inſtructed; a Replication, that A. did not retain the Defendant, and an Iſſue. Ro. Ent. 99.

To an Action againſt a Sheriff for a falſe Return. A Plea, that before an Inquiſition was taken, upon the Writ of Capias Utlagatum, a Prerogative Writ Iſſued from the Court of Exchequer, directed to the Sheriff, to levy the King's Debt, by Virtue whereof they ſeiſed all the Goods of D. and had the Monies before the Barons of the Exchequer; and that the Defendant had no other Goods; a Demurrer thereto. 2 Ven. 37.

Non cul' by the Sheriff to an Action for an Eſcape, and a falſe Return. Ro. Ent. 9.

The Defendant pleaded, that the Conveyance was made bona fide, and not fraudulent, but upon a good Conſideration; Replication maintaining the Declaration, and a Traverſe of the Matter pleaded in Bar, Rejoinder, and an Iſſue upon the Traverſe. Re. Dec. 87, 88.

To Declarations for charging the Plaintiff with Crimes, &c.

To a Declaration for a ſcandalous Petition exhibited to the Committee of Parliament; a Plea by Proteſtation, &c. for Plea, that the Defendant cauſed the Writing to be written in the Form of a Petition, and delivered it at the Houſe of Commons, according to the uſual Manner done by others; and it was approved of by a Member of that Houſe, with an Averment, &c. a Demurrer thereto, and Judgment for the Defendant. 1 San. 124.

Two Defendants plead Not guilty. The others plead that they went to aid the Conſtable to carry the Plaintiff before a Juſtice of the Peace, and that the Juſtice bound them over to proſecute the Plaintiff at the next Seſſions, and to give in Evidence what they knew of the Matter. Vid. 145. Replication, that the Defendants did it of their own Wrong, and an Iſſue.

To Actions for malicious Indictments.

Not guilty pleaded to an Action upon the Caſe, for preferring a Bill of Indictment of Felony. Wi. Ent. 96.

Not guilty by two of three Defendants, and the Attorney for the Third confeſſeth Judgment by Non ſum Informatus. Wi. Ent. 98.

To a Declaration for charging the Plaintiff with raviſhing a Girl; one of the Defendants pleads Not guilty, and the other juſtifies. Pl. gen. 50.

The Defendant pleads that he loſt Goods, and ſuſpecting the Plaintiff to have ſtolen them, he gave Notice thereof to a Conſtable and others, who upon ſearching found the Goods in the Plaintiff's Poſſeſſion; whereupon the Conſtable carried him before a Juſtice of Peace, who upon an Examination of the Matter, committed the Plaintiff to Gaol, and took a Recognizance from the Defendant to proſecute, who cauſed a Bill to be drawn and ingroſſed againſt the Plaintiff; and that the other Defendant came to prove the Goods to be the Defendant's Goods; a Replication, that they did it of their own Wrong, and an Iſſue. Wi. Ent. 107. Wi. Rep. 73.

Pleas to Declarations in Actions of Slander.

Not guilty pleaded, and a Verdict for the Plaintiff. Wi. Ent. 70.

The Defendant pleads the Statute of Limitations at large. 3 Inſtr. Cl. 298.

That the Defendant ſpoke other Words, and traverſed the Words in the Declaration. 1 Bro. 27. Ro. Ent. 94. Pl. gen. 31, 36. Mo. Int. 45. Br. R. 98. Re. Dec. 114, &c. 3 Inſt. Cl. 209. Replication and Iſſue. Id. 211, 212. Clift 118. Cl. Aſſ. 114, 115. Co. Ent. 25, 29.

Proteſting That the Plaintiff was not of ſuch a good Reputation, &c. for Plea, the Defendant juſtified the Words of Perjury: For that the Plaintiff being a Sheriff, farm'd the Office of Under-Sheriff contrary to his Oath, and the Duty of his Office; Replication, that the Defendant ſpoke the Words of his own Wrong, and an Iſſue thereon. Bro. Red. 97. Not guilty as to ſpeaking the Words, and as to the Reſidue, that he indicted the Plaintiff by the Command of the Juſtice. 2 Bro. 14.

A Juſtification of Words, that he keeps a ſuſpected Bawdy-houſe; and a Traverſe of the Words in the Declaration, and an Iſſue. Cl. Aſſ. 106.

Proteſting, that the Declaration is inſufficient; for Plea, the Defendant juſtifies his ſpeaking the Words in the Declaration. Bro. Vad. 117. Replication, that he ſpoke them in his own Wrong, and an Iſſue.

The Defendant juſtifies Words ſpoken of a Sheriff. 3 Inſt. Cl. 214. Replication, and Iſſue.

The like of exhibiting a Petition to the Juſtices of Peace of the ill Behaviour of the Plaintiff. Ro. Ent. 74. Plaintiff demurs. 3 Inſt. Cl. 216. Defendant juſtifies exhibiting a Petition to the Committee for Grievances. Id. 218. Plaintiff demurs, a ſpecial Juſtification, and a Demurrer with Notes thereon. Ro. Ent. 71.

To a Declaration for Words of Theft; a Plea, that the Plaintiff was a Felon, and had feloniouſly taken a Pig, upon which the Defendant ſpoke the Words. Bro. R. 99.

The like for ſtealing Goods. Mo. Int. 44, 47. Not guilty pleaded thereto. For that the Plaintiff was indicted for the ſame Offence, &c. 2 Mo. Int. 136.

The like for ſtealing Sheep; Replication by the Act of a general Pardon; a ſpecial Demurrer thereto, and Judgment for the Plaintiff. Ro. 71.

To the like Declaration a Plea, that the Defendant's Houſe was broken open by Thieves committing Burglary, and that the Plaintiff was one of them. Han. *66*. Tho. 72. 2 Inſt. Cl. 229, 231.

A Juſtification, for that the Plaintiff had committed Felony. 2 Mo. Int. 137.

To the like Declaration a Plea, that the Plaintiff had ſtolen three Ounces of Silver Plate, whereupon the Defendant ſpoke the Words; Replication, that they were ſpoken by the Defendant of his own Wrong, and Iſſue. 1 Saund. 243.

That the Plaintiff had feloniouſly ſtolen a Hogſhead of the Defendant's. Cl. Aſſ. 94.

To a Declaration for Words of Murder and Theft; a Plea, that the Plaintiff was an Acceſſory to the Murder, and a Receiver of ſtolen Goods; Replication, proteſting that he was not acceſſory, nor knew of the Felony; for Plea a Demurrer. Pl. gen. 38.

That the Plaintiff ſtruck M. T. upon which ſhe died. 2 Mo. Int. 136.

Husband and Wife juſtifie, for that the Plaintiff murdered his Wife; Replication, that the Words were ſpoken of the Defendant's own Wrong, and an Iſſue. 3 Inſt. Cl. 222.

Defendant juſtifies for charging the Plaintiff with Felony, becauſe he had ſtolen Plate; Replication, that the Words were ſpoken by the Defendant of his own Wrong, and an Iſſue. 3 Inſt. Cl. 224.

The Defendant juſtifies, for that the Plaintiff ſtole his Sheep; and an Iſſue thereon. Id. 227.

Juſtification, for that the Cup was found upon the Plaintiff; Replication, that the Words were falſly and maliciouſly ſpoken; with a Traverſe, a Rejoinder, and Iſſue. Id. ibid.

Juſtification, for that the Plaintiff had ſtolen a Horſe; Replication, that the Words were ſpoken by the Defendant of his own Wrong. Id. 229.

For Words of Murder, that the Plaintiff undertook to adminiſter Medicines to one Sick, who by means thereof died; whereupon the Defendant did ſpeak the Words. Tho. 69. the like, Mo. Int. 135. the like, 3 Inſt. Cl. 223.

To a Declaration of Perjury; a Plea, that the Plaintiff was perjured as a Witneſs at the Niſi Prius; Replication, that the Words were ſpoken by the Defendant of his own Wrong. Tho. 65. the like, 3 Inſt. Cl. 234, 237.

The like Plea as a Witneſs at the Seſſions of the Peace, the like Replication, Br. R. 60.

The like as a Witneſs upon Interrogatories in Chancery. Pl. gen.

The like upon an Anſwer in Chancery. Clift 103.

The like before the King and Council; Replication, that Words were ſpoken by the Defendant of his own Wrong. Pl. gen. 28.

The Defendant juſtifies the Word of Perjury, for that the Plaintiff being ſworn at a Court-Leet, revealed the Secrets of the Jury. Bro. Va. 118.

A Plea, for that the Plaintiff forſwore himſelf in an Iſſue, concerning the Limits of a Pariſh. 2 Mod. Int. 134.

For that the Plaintiff ſold Wares by falſe Weights. 3 Inſtr. Cl. 232. Replication, that the Defendant ſpoke the Words of his own Wrong.

For that the Plaintiff owed the Defendant the Money demanded; Replication, that the Words were ſpoken by the Defendant of his own Wrong. 3 Inſt. Cl. 233.

The Defendant juſtifies, for that he was upon the Inqueſt by which the Plaintiff was indicted; Replication, that there is no ſuch Record; Rejoinder, that there is ſuch a Record. Id. 582.

To a Slander of a Title, Defendant pleads, and ſhews a Covenant and Uſes, and ſo juſtifies. Id. 259, &c. Co. Ent. 34.

To an Action for Words ſpoken of an Attorney, that the Plaintiff was preſented by a Jury of Attornies for Miſbehaviour; and afterwards ſtruck out of the Roll of Attornies by the Juſtices, &c. whereupon the Defendant did ſpeak the Words; a Replication, that the Defendant ſpoke them of his own Wrong, and a Traverſe, that he was ſtruck out of the Roll by the Judges; a Demurrer thereto. Ra. Ent. 107.

Pleas to General Torts.

To an Action for digging ſo near the Foundation of the Plaintiff's Houſe, that, &c. the Defendant pleads a Recovery in a former Action of Treſpaſs; and that Damages were recover'd for the ſame Tort. 3 Lev. Rep. 133.

To an Action brought againſt one who ſpoil'd the Plaintiff's Hogſheads fill'd with Wine, (being in the Street before the Plaintiff's Door) with a Coach and Horſes; the Defendant pleads, That the Hogſheads were ſet in the Highway, whereby the Paſſage was ſtopp'd, and the Defendant carefully paſſing by with his Coach, removed one of the Hogſheads; a Replication, that the Defendant ſpoil'd the Hogſheads of his own Wrong, by Reaſon whereof one of the Hogſheads fell into the Cellar, and was broken, and the Wine ſpill'd. An Iſſue thereon. Bro. Red. 92.

To an Action for negligently keeping the Defendant's Fire; the Defendant pleads, That Somebody unknown to him, ſet Fire to the Houſe adjoining to the Plaintiff's Houſe, and a Traverſe, that he negligently kept his Fire. 1 Brown 29. 3 Inſtr. Cl. 337.

That the Defendant did not burn down the Mill in ſuch Manner and Form, &c. Ro. Ent. 65.

To a Declaration againſt an Innkeeper, that the Defendant gratis lodged the Plaintiff, and a Traverſe, that the Plaintiff kept a Common Inn. 2 Mo. Int. 147. 3 Inſtr. Cl. 340. Replication and an Iſſue upon the Traverſe.

To a Declaration in an Action for keeping a Dog, which bit the Plaintiff. The Defendant pleads, that he did not knowingly keep a Dog accuſtomed to bite Men. 1 Brown. 29.

To a Declaration for loſing a Horſe by Negligence, the Defendant pleads, that the Plaintiff requeſted the Defendant to put his Horſe to Graſs which being ſo put, was carried away by Thieves. And Traverſe, that it was taken away by the Negligence of the Plaintiff or his Servants. A Replication, maintaining the Declaration, and a Traverſe, that the Plaintiff requeſted the Defendant to put the Horſe to Graſs. Ro. Ent. 23. 3 Inſtr. Cl. 346. And an Iſſue upon the Traverſe.

A Plea, taking a Proteſtation, that the Goods were not put into the Inn; for Plea, That they were not taken away by Thieves. 3 Inſtr. Cl. 339.

A Plea, that the Defendant kept the Plaintiff's Horſe well, and ſufficiently, and Traverſe the Negligence. Ra. Ent. 3.

That a Mare which was hired died of divers Diſtempers; and Traverſe, that the Defendant over-loaded her. Hern. 101.

To a Declaration againſt an Attorney, for appearing without a Warrant; a Plea, that the Plaintiff retained the Defendant to appear. Aſh. 39.

To a Declaration for cancelling a Bond; a Plea, that the Plaintiff upon Payment of the Money, deliver'd up the Bond to the Defendant by way of Acquittance, whereupon the Defendant cancelled it.

A Plea, taking a Proteſtation, That the Plaintiff delivered the Writing to the Defendant to carry and deliver it to another, and that the Defendant did ſo deliver it; for a Plea, That the Defendant was Not guilty of the Obliterating, &c. Ra. Ent. 7. Vet. Int. 20.

A Plea, taking a Proteſtation, That there is no Truth in the Declaration: For a Defence, that the Plaintiff did not deliver to the Defendant the Writing to look on; a Demurrer, for that the Plea did not anſwer the Matters in the Declaration. Ra. Ent. 7. Vet. Int. 163.

To an Action brought by Churchwardens for cutting Trees in the Church-Yard, which by Cuſtom ought to have been for the Repairs of the Church-Yard. A Plea, That the Defendant as Rector, was ſeiſed of the Church-Yard in Right of his Rectory cut down the Trees; and a Traverſe, that the Fences of the Church-Yard wanted Repairs. Hern. 210.

To an Action upon the Caſe againſt the Overſeers of the Poor, for unduly ſelling a Cow, and not returning the Overplus: A Plea, as to all, but returning the Overplus Not guilty; and as to that, a Tender and Refuſal to accept. Hern 235.

A Plea, that it belonged to the Cuſtos Brevium to indorſe the three laſt Proclamations of the Fine, and a Traverſe, that it belonged to the Chirographer to indorſe all the Proclamations. Co. Ent. 17.

To an Action for carrying away Wood prepared for ſmelting Iron: A Plea, that T. ſold the Defendant one hundred Cords of Wood to be cut down, &c. a Replication, that T. ſold the Wood before to S. who ſold it to the Plaintiff; a Rejoinder, maintaining the Bar, and a Traverſe, that T. ſold the Wood to S. Co. Ent. 36.

APPENDIX.

Some few Caſes relating to Pleas in Abatement, *not before inſerted under that Title.*

1. THAT there needs no Plea to abate a Writ, which is of itſelf abateable. 2 *Roll's Rep.* 272.

2. Where a Writ ſhall abate of itſelf, and where not but by Plea. 1 *Bulſt.* 5. Earl of *Shrewsbury* v. Earl of *Rutland.* 2 *Roll's Rep.* 272.

3. Where the Court will abate a Writ *ex Officio.* 1 *Roll's Rep.* 176. *Cro. Eliz.* 22, 121. *Palmer* 270, 311.

4. What ſhall abate a Writ of Error, and what not. 2 *Bulſt.* 230. *Huxley* v. *Harriſon*, 2 *Bulſt.* 159. *Heydon* v. *Godſole* and others.

5. Where a Writ of Waſte ſhall abate by Death. 1 *Roll's Rep.* 82.

6. A Writ falſe in Part, is not like the Action not lying for Part, but ſhall abate the Writ in the Whole. 1 *Roll's Rep.* 307.

7. That by Pleading over, the Defendant loſes the Advantage of a a Matter in Abatement of the Writ. 2 *Roll's Rep.* 176. *Cro. Eliz.* 554.

8. That to plead a Bond made to three, and not to two, to an Action brought by three is in Abatement, and not in Bar. *Cro. Eliz.* 202.

9. Where a Writ of *Quare Impedit* ſhall not abate without Plea. *Palmer* 309.

10. Where the Declaration is againſt one on a Bond or Indenture, and upon *Oyer* it appears, two are bound or covenant. *Palmer* 398. *Conſtable* v. *Clobury.*

11. The Wife named before her Husband. *Palmer* 33.

12. The Plaintiff declaring for more Damages, than is contained in his Original. *Palmer* 193.

13. That the Writ bore *Teſte* before the Letters of Adminiſtration. *Lut.* 9. *Walford* v. *Sivil.*

14. A Plea by an Executor, that the Teſtator was alive at the Day of the Writ purchaſed. *Lut.* 13, 16. *Marſhal* v. *Burnet.*

15. That the Writ was brought before the Money due. *Lut.* 1642. *Simpſon* v. *Garſide.*

16. Where a Plea of Excommunication was ill. *Lut.* 19. *Bradley* v. *Glynne.*

17. Adminiſtrator pleads that he is Adminiſtrator *durante minori ætate*, and ill pleaded for want of concluding with an Averment. *Lut.* 20. *Little & Ux.* v. *Plant.*

18. That Coverture is not pleadable after an Imparlance, and a Replication by Way of Eſtoppel. *Lut.* 23. *Bartelet* v. *Burton.*

19. To a *Scire facias*, that there were but 14 Days between the Teſte and Return of the Writ. *Lut.* 25, 26. *Naers* v. the Counteſs of *Huntington.*

20. A Plea by an Executor, that he is an Adminiſtrator granted by the Dean of *Canterbury* during the Suſpenſion of the Archbiſhop; and ill, becauſe the Defendant did not ſay that there were *bona notabilia.* *Lut.* 29, 30. *Young* v. *Caſe.*

21. Another Action depending, pleaded upon a Writ directed to the Sheriff of *Wilts*; *Replication*, that nothing was done upon that Writ, but that there was another Writ of the ſame Teſte directed to the Sheriff of *Southampton*; and the Defendant appear'd to that Writ, and thereupon he declared, and the Judgment was for the Defendant, becauſe the Action appear'd to be brought in *Middleſex*, and ſo the Plaintiff had falſified his own Writ. *Lut.* 33, 34. *Bowler* v. *Spatchurſt.*

22. A Plea, that the Plaintiff's Teſtator was an *Alien*; *Replication*, that he ſtaid in *England* by Licence, &c. Judgment, *quod reſpondeat ouſter*. Lut. 34, 35. *Wells* v. *Williams*.

23. A Plea to a *Formedon* in Deſcender of Entry into Part, held repugnant and inconſiſtent with the other Part of the Plea. *Lut.* 37, 38, 39. *Moſley* v. *Coldwell*.

24. In Dower, that the Demandant is waived; Judgment for the Tenant, tho' ſeveral Exceptions to the Plea. *Lut.* 39, 40. *Draycot* v. *Curzon*.

25. Matter in Abatement concluded in Bar, the Court gave Judgment as upon a Plea in Bar. *Lut.* 42. *Wallis* v. *Savil*.

26. Where a ſpecial Imparlance was not well enter'd, ſo that the Plea of Privilege by means thereof was ill. *Lut.* 45. *Wentworth* v. *Squib*.

27. A Plea in Abatement, That two other Obligors were alſo bound. *Lut.* 695, 697. *Sayer* Adminiſtrator, &c. v. *Chayter*.

28. Where the Defendant pleads, that he is Adminiſtrator, and not Executor, is ill, without a Traverſe of his having adminiſtred the Goods before Adminiſtration granted. *Lut.* 889. *Grey* Executor, &c. v. *Thorowgood* & *Ux'* Adminiſtrator, &c. 2 *Ven.* 179, 180. The ſame Point adjudged.

29. To an Action of Waſte, that the Plaintiff's Title was by Deviſe, and a Traverſe of the Deſcent. *Lut.* 1558. *Ferrers* v. *Williams*.

30. Outlawry in the Teſtator, pleaded to an Action brought by an Executor. *Lut.* 1603. *Powis* Executor v. *Williams*.

31. To a Declaration upon ſeveral *Aſſumpſits* brought by the Wife; the Defendant pleads, that after the Writ purchaſed, the Plaintiff married *H. D.* Replication, that after the Writ purchaſed, ſhe did not marry *H.* to which there was a Demurrer, becauſe that the Replication doth not affirm that the Plaintiff was Sole; and another Exception was taken, that by the Replication, the Time of the Marriage is made Part of the Iſſue, for it is that after the Writ purchaſed, &c. ſhe did not marry *H. D.* whereas, if ſhe was married before the Writ, it ought to abate; but it ſeems the Plaintiff had Judgment. *Lut.* 1638, 1639, 1640, 1641. *Pearſon* v. *Hulſe*.

32. Where a Writ of *Error* to reverſe a *Fine*, brought by *A.* and *B.* Tenants for Life, and *C.* the Remainder-Man an Infant, was adjudg'd to abate only as to the Infant. 1 *Leon.* 137.

33. Where a Writ of Error in *Covenant* did not abate, tho' the Defendant was call'd Aſſignee of *C.* in the Writ of Covenant, but Aſſignee, &c. omitted in the Writ of Error. *Dyer* 356. *pl.* 41.

34. A Writ of *Error*, returned by the Mayor, Aldermen, and Deputy-Recorder abated, it being directed to return a Record before the Mayor, Aldermen and Recorder. *Stiles* 203.

35. The Defendant in *Error* cannot plead *Outlawry* of one of the Plaintiff's in Error. *Cro. Jac.* 616.

36. Where the Defendant pleaded an *Outlawry*, and the Plaintiff replied *Nul tiel Record*, and at the Time of the Plea the Plaintiff was outlawed, but he reverſed it before the Day of bringing in the Record, thereupon a *Reſpondeas ouſter* was awarded. *Cro. Jac.* 484.

37. Where the Defendant concludes his Plea in *Abatement*, and the Plaintiff his Replication in *Bar*, or Demurs, and concludes as in a Demurrer to a Plea in Bar, it is a *Diſcontinuance*. *Carthew* 138. 1 *Show.* 155.

38. There cannot be two Pleas in Diſability of the Plaintiff, but where the ſecond Plea ariſes from a Matter ſubſequent to that contained in the Firſt. 3 *Leon.* Caſe 222.

39. The *Damnum* in the Declaration being more than the *Damnum* in the Writ, it was adjudg'd it would not abate the Writ. *Cro. Jac.* 108.

40. One *Partner* cannot plead a *Miſnomer* of the other. *Lut.* 36. nor Bail *Miſnomer* of the Principal. *Mod. Caſes* 289.

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43. Where a Writ of *Quare Impedit* was not abated but amended. *Goldsb.* 78.

44. Where a Plea of no ſuch Perſon as the Ordinary *in rerum Natura*, pleaded in a *Quare Impedit*, abated the Writ. *Hutton* 31. *Coppledich* v. *Tanſey*.

45. Where a Writ is brought againſt three, and they plead as to one of the Defendants there is no ſuch Perſon, the Writ ſhall abate as to him only. *Plow.* 9.

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49. Where a Writ of Treſpaſs *Quare filium & hæredem rapuit & maritavit* was held good, omitting to alledge that the Marriage belong'd to the Plaintiff. *Stile* 303.

50. An Action of Treſpaſs was brought againſt a Parſon, for taking Tithe Corn, which the Plaintiff claimed as a Portion of Tithes in Right of his Wife, and laid the Treſpaſs the 27th of *Auguſt*, 29 *Eliz.* and it appear'd upon Evidence, that the Plaintiff delivered the Defendant a Licenſe to be married, dated the 28th of *Auguſt*, 29 *Eliz.* This Matter was adjudg'd to abate the Writ. 1 *Leon.* 104. *Pawlet* v. *Lawrence*. *Q. if this be Law*, for the Day of the Treſpaſs laid in the Declaration is not material, unleſs made ſo by Matter contained in the Pleadings.

51. Where the Writ was adjudged not to be abated in an Action brought by the *Maſter* for beating his *Servant*, whereby the Plaintiff loſt his Service for the Space of ſix Months, tho' the Original appear'd to be ſued out before the ſix Months were expired. *Hob.* 284.

52. Where the Writ in Ejectment abated, it appearing to be ſued out before the Cauſe of Action. *Cro. Car.* 272, 281. *Johns* v. *Stayner*, 5 *Co.* 37.

53. Where an Entry into Part of the Lands, pending the Suit, abates the Writ. *Stile* 260.

54. An Action of Debt was brought upon a *Bond*, with a Condition to deliver twenty Quarters of Wheat. The Defendant pleaded, pending the Suit, an Acceptance of fifteen Quarters, and adjudged *no Plea*; for it is Collateral, and not Part of the Sum contain'd in the Bond; and if it be a Plea, it is a Plea in Bar, and not in Abatement; and Judgment was given for the Plaintiff. *Cro. Eliz.* 253. *Stone* v. *Radiſh*.

55. And where ſuch Matter was pleaded in *Bar*, and found for the Plaintiff, it was held to be aided by the Statute of *Jeofails*. *Cro. Eliz.* 260. *Andrews* v. *Kirk*.

56. Where an Action was brought upon a *Bond* of 80 *l.* and the Defendant pleaded an *Attachment* of 40 *l.* by the Cuſtom of *London*, in Satisfaction of ſo much due upon this Bond, (*Pendente lite*) all the Court (except *Popham*) held this to be a Plea in *Bar*, and not in *Abatement* of the Bill. *Cro. Eliz.* 342. *May* v. *Middleton*, *Moor* 598.

57. Where the Tenant in Special Tail brings an Action of *Waſte*, and the Iſſue dies, the Writ abates. 1 *Leon.* 330.

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63. Where the Defendant pleaded in Abatement to a *Scire Facias*, to have Execution upon a Recognizance, that *B. S.* was ſeiſed of three Acres not named in the Writ, and upon an Iſſue join'd thereon, the Jury find, that *B.* and *J. S.* were Jointenants of the three Acres; the Iſſue was adjudg'd to be found for the Plaintiff. *Gouldsb.* 160.

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